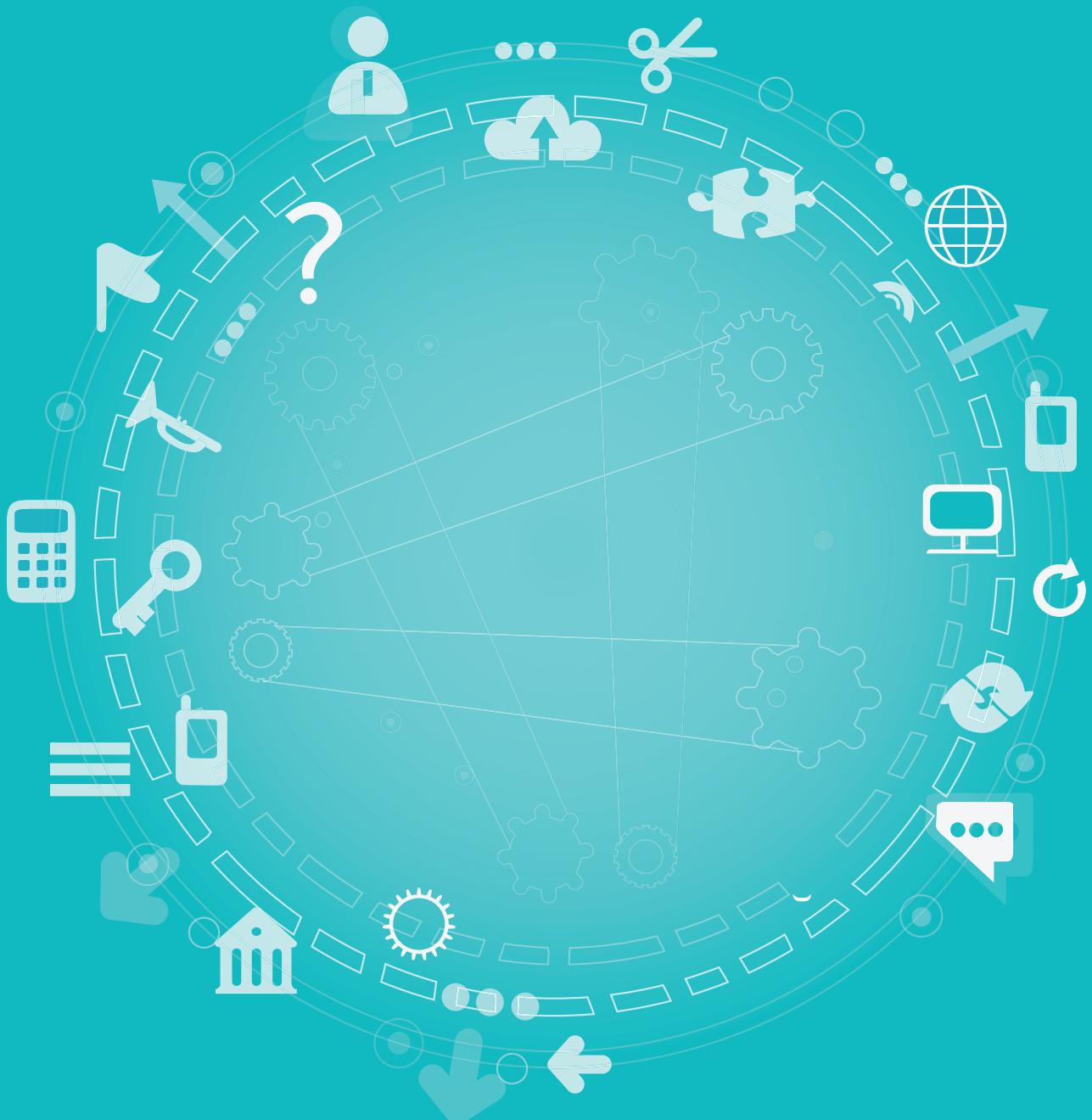




An Coimisiún um Chaidreamh san Áit Oibre  
Workplace Relations Commission

# WORKPLACE RELATIONS COMMISSION

## ANNUAL REPORT 2017





# **WORKPLACE RELATIONS COMMISSION**

## **ANNUAL REPORT 2017**

Presented to the Minister of State  
with special responsibility for  
Trade, Employment, Business, EU Digital  
Single Market and Data Protection

in accordance with  
sections 32(1) and 23(3) of the Workplace Relations Act 2015

# DIRECTOR GENERAL'S REPORT

It is my pleasure to submit the third Annual Report of the Workplace Relations Commission (WRC).

The WRC was established on 1 October 2015, bringing under one roof the work of the National Employment Rights Authority, the Labour Relations Commission, the Rights Commissioner Service, the Equality Tribunal, and the first instances remit of the Employment Appeals Tribunal. This amalgamation formed a cornerstone of the then Government's public sector reform programme. It was very ambitious in scope, and highly challenging in terms of delivery.

I outlined in last year's Annual Report the difficulties encountered and overcome in the first 18 months of operation. These included glitches in procedures for adjudication service users and staff, modification of processes and procedures on an ongoing basis, creating a single organisational culture where four had existed previously and moving staff from three Dublin premises into one. The forbearance of our service users and staff were crucial in assisting the WRC overcome these obstacles.

While issues still arise from time to time, I am confident that most of these bedding-in problems have been resolved. This stabilisation became increasingly evident over the course of 2017.



Our achievements over 2017 were significant:

- adjudication hearings increased by 24 per cent on 2016,
- adjudication decisions issued increased by 82 per cent over the same period,
- outstanding legacy complaints were reduced to under 300 from over 1600 on hands at the start of 2016,
- where no requests for postponements are received and relevant submissions are received in a timely manner, the Adjudication Service is now processing over 90 per cent of cases received in less than six months,
- an additional cohort of Adjudication Officers were trained to Hetac Level 7 and are now hearing cases,
- conciliation and dispute facilitation increased by 26 per cent while the WRC played a central role in the successful conclusion of the Public Sector Stability Agreement,
- face-to-face complaint mediations doubled in 2017 over 2016,
- while the number of inspections concluded was stable year-on-year, the WRC increased the amount recovered in unpaid wages from €1.5m in 2016 to some €1.8m in 2017,
- the WRC opened its first regional office in Sligo which is now capable of delivering the range of services that are currently available in the Dublin office, and
- a significant campaign "Guide to Working Life" was developed and launched to raise awareness around basic employment rights and obligations among SME and "start-up" employers as well as among employees and prospective employees more generally.

At a broader level, throughout 2017, the WRC worked closely with our stakeholders about our work priorities, and the way in which we take decisions and do our business. This has been very beneficial and will play

# CONTENTS

an ongoing part in the improvement of our service delivery and service offer into the future.

As part of this process, the WRC commissioned an extensive customer survey of all users of our services in the latter half of 2017. The survey provided very good feedback on what we are doing well and need to continue doing well into the future and good tangible evidence of what areas of operation we need to look at again in improving service delivery and improving our communications on probable outcomes to our users. This information has proved extremely useful and I would like to thank all service users who replied.

In the latter part of 2017, I and my staff initiated an extensive engagement with all key parties in relation to the Government Decision to bring An Garda Síochána within the remit of the WRC at some stage in the near future. It is critical that all parties, including the WRC, have a clear understanding of the processes and procedures in advance of commencement date. This development will have a significant effect on resources allocation within the WRC; this reality was noted by the Government at the time.

None of the achievements and developments I have outlined would have been possible without the dedication and commitment of the staff of the WRC, for whose hard work I have the highest praise. In addition, the hard work and expertise of the Adjudication Officers, the majority of whom work on a case-by-case basis, has been critical to ensuring the reputation of the WRC is of the highest quality.

I would also like to acknowledge the continued support of the Minister, the Board and the Department of Business, Enterprise and Innovation. This support has been central to the success of the WRC to date.

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Oonagh Buckley  
Director General



<b>Director General's Report</b>	Page 4
<b>Board of the Commission</b>	Page 6
<b>Key Performance Metrics</b>	Page 7
<b>Functions of the Commission</b>	Page 10
<b>Resources 2017</b>	Page 11
<b>Service Reports</b>	
Information and Customer Service	Page 12
Advisory Service	Page 15
Conciliation, Facilitation and Mediation Service	Page 17
Conciliation	Page 17
Employment Rights Mediation	Page 18
Workplace Dispute Mediation	Page 19
Adjudication Service	Page 20
Inspection and Enforcement Service	Page 28
Corporate Report	Page 33
<b>Work Programme 2017: Our Service Performance</b>	Page 35
<b>Appendices</b>	
Legislation by which Complaints may be Submitted to Adjudication Service	Page 43
Specific Complaints Received in 2017: Legislative Basis	Page 45
Key Supreme and High Court Judgments and Adjudication Decisions	Page 46
Inspection Activities and Outcomes: 2017	Page 60
Prosecutions: 2017	Page 61

# WRC

An Coimisiún um Chaidreamh san Áit Oibre  
Workplace Relations Commission

# BOARD OF THE COMMISSION

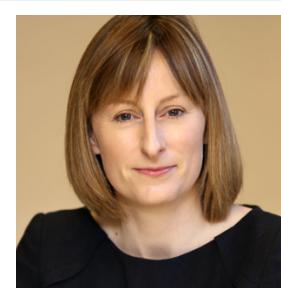
The nine-person Board is chaired by Dr. Paul Duffy (Vice-President Pfizer Global Supply).



Dr. Paul Duffy



Liam Berney



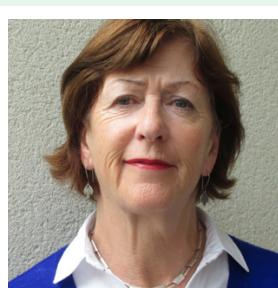
Maeve McElwee



Shay Cody



Audrey Cahill



Geraldine Hynes



Richard Devereaux



Dr. Michelle O'Sullivan



Deirdre O'Brien

## Fees/Ethics in Public Office

All Board members, Adjudicators, Rights Commissioners and relevant Officers of the Commission were advised of their obligations and/or completed the appropriate returns under the Ethics in Public Office Acts, as required.

The Chairman and members of the Board are not in receipt of any fee in connection with the performance of their duties as Board members.

## Board Meetings

Over the course of 2017 the Board convened on four occasions in April, May, July and October. The July meeting was held in the WRC office in Sligo.

## Work Programme 2018

In accordance with section 22(1) of the Workplace Relations Act 2015, the Board prepared the WRC Work Programme 2018. This Programme was submitted in November 2017 to Mr. Pat Breen, T.D., Minister of State with special responsibility for Trade, Employment, Business, EU Digital Single Market and Data Protection.

## Director General

Ms. Oonagh Buckley was appointed as the Director General by the Minister for Business, Enterprise and Innovation in July 2016.



Board Meeting in Sligo, July 2017

# KEY PERFORMANCE METRICS

WRC ACTIVITY 2017

**14,001**  
Specific Complaints received



**7,300**  
Adjudication Complaint Files Received (up 6%)

**4,370**  
Adjudication Hearings (up 24%)



**2,247**  
Adjudication Decisions Issued (up 82%)



**92%**  
Of Adjudication Complaints Processed  
in less than 6 months

## TYPE OF COMPLAINT

Of the specific complaints received:

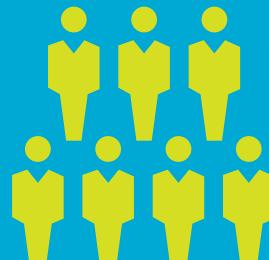
**27%**  
Related to Pay Issues

**13%**  
Related to Working Time

**14%**  
Related to Unfair Dismissal

**11%**  
Related to Discrimination / Equality

**11%**  
Related to Trade Disputes / IR Issues



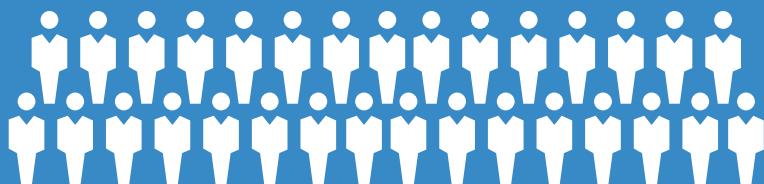
**8%**  
Related to Terms & Conditions of Employment

# KEY PERFORMANCE METRICS

WRC ACTIVITY 2017



**4,750**  
Inspections Concluded



**99,000**  
Employees covered by inspections (up 24,000)

**€1.8m**

Wages Recovered  
(up 8%)



**1.65m**

Web Views  
(up 8%)



Legacy Adjudication  
Complaints Reduced to

**295** “On Hands”

**2,234**

Conciliation & Dispute  
Facilitation Meetings Held



**84%**

of Collective Disputes  
Resolved

Face to Face Mediations Doubled on 2016

**52,001**

Calls to *InfoLine* Dealt With



# KEY PERFORMANCE METRICS

WRC ACTIVITY TIME SERIES:  
1 OCTOBER 2015 – 31 DECEMBER 2017

	2015	2016	2017	TOTAL
<b>CONCILIATION</b>				
CONFERENCES	393	1,348	1,239	2,980
FACILITATION	79	423	995	1,497
<b>MEDIATION</b>				
TELEPHONE COMPLAINT	210 -	662 69	419 164	1,291 233
<b>ADJUDICATION</b>				
COMPLAINTS	3,212	14,004	14,001	31,217
COMPLAINT FILES	1,690	6,863	7,317	15,870
DECISIONS (CURRENT)	-	1,232	2,247	3,479
LEGACY (ON HANDS)	3,965	1,628	295	-3,670
<b>ADVISORY</b>				
NEW PROJECTS	22	64	68	154
<b>INSPECTION</b>				
CONCLUDED	1,650	4,830	4,747	11,227
WAGES RECOVERED	€0.51m	€1.5m	€1.77m	€3.8m
PROSECUTIONS	20	136	125	281
<b>INFORMATION</b>				
CALLS ANSWERED	17,275	59,459	52,001	128,735
WEB VISITS	0.35m	2.2m	2.33m	4.9m

Table 1



# FUNCTIONS OF THE COMMISSION

The main functions of the WRC are to:

- Promote the improvement of workplace relations, and the maintenance of good workplace relations,
- Promote and encourage compliance with relevant employment and equality legislation,
- Provide guidance in relation to compliance with Codes of Practice,
- Conduct reviews of, and monitor developments, in workplace relations generally,
- Conduct or commission relevant research and provide advice, information and the findings of research to Joint Labour Committees and Joint Industrial Councils,
- Advise the Minister for Business, Enterprise and Innovation in relation to the application of, and compliance with, relevant legislation, and to
- Provide information to the public in relation to employment legislation.<sup>1</sup>



The Commission's core services reflect this framework and include the provision of early dispute resolution, mediation, conciliation, facilitation and advisory services, adjudication on complaints and disputes, promoting compliance with employment rights and equality legislation and, where necessary, achieving this through enforcement, the provision of employment rights and industrial relations information generally, and the processing of employment agency and protection of young persons (employment) licences.

<sup>1</sup>Employment Equality Act information provided by the Irish Human Rights and Equality Commission

# RESOURCES 2017

## COST OF PROVIDING WRC SERVICES

The WRC is an office of the Department of Business, Enterprise and Innovation and is funded from the overall Departmental Vote.

PAY	€11.065m
NON-PAY	€2.314m
<b>TOTAL</b>	<b>€13.379m</b>

Table 2

## STAFFING

At end-2017, the Commission staff allocation stood at 176 permanent employees who are civil servants and part of the overall staffing establishment of the Department of Business, Enterprise and Innovation. The staffing is supplemented by a further 37 external Adjudication Officers who are contracted to assist the Adjudication Service on a case-by-case basis.

DIRECTOR GENERAL	1
COO/ASSISTANT SECRETARY	1
PRINCIPAL OFFICER	6
ASSISTANT PRINCIPAL	19.4
SOLICITOR	0.73
ADMINISTRATIVE OFFICER	2
HIGHER EXECUTIVE OFFICER	19.33
EXECUTIVE OFFICER	71
CLERICAL OFFICER	56

Table 3



# SERVICE REPORTS

## INFORMATION AND CUSTOMER CARE

Information on rights and entitlements under employment legislation is provided by the WRC Information and Customer Service Unit. The Division also processes all WRC complaint forms and deals with all aspects of the licensing of employment agencies and of children to work in film, cultural, sport or advertising. Information in relation to employment rights, equality, industrial relations and employment permits is supplied through:

- A dedicated telephone service operated by experienced Information Officers,
- The Workplace Relations Commission website ([www.workplacerelations.ie](http://www.workplacerelations.ie)),
- Information booklets, leaflets and other literature designed and produced in house,
- Information provision to relevant parties regarding the status of complaints, dispute referrals and applications for employment permit cases.

In 2017, as part of a new Guide to Working Life the Service designed and produced a series of mini-information sheets for employees and SMEs and "Start-Ups" in relation to key stages of working life: starting a job or taking on staff for the first time, when

family or personal issues impact on job performance or staff availability, when friction arises in the workplace, when the employee leaves the workplace, voluntarily or otherwise, and when the employee is considering retiring.



The "Infoline" - 1890-80-80-90 - dealt with some 52,001 calls during 2017. At just under 20,000 calls, by far the highest call type related to employment permits queries. Such calls, given the urgency and personal impact of the issue, are by their nature complex and time-consuming. Other topics that generated a high number of calls related working hours (14%), terms of employment (9%), payment of wages and redundancies (7% each). In addition, the Service dealt with almost 6,000 calls in relation to making a complaint to the WRC.

The following charts provide a breakdown of the type of calls received, the sectors represented and the caller type.



## CALL TOPIC

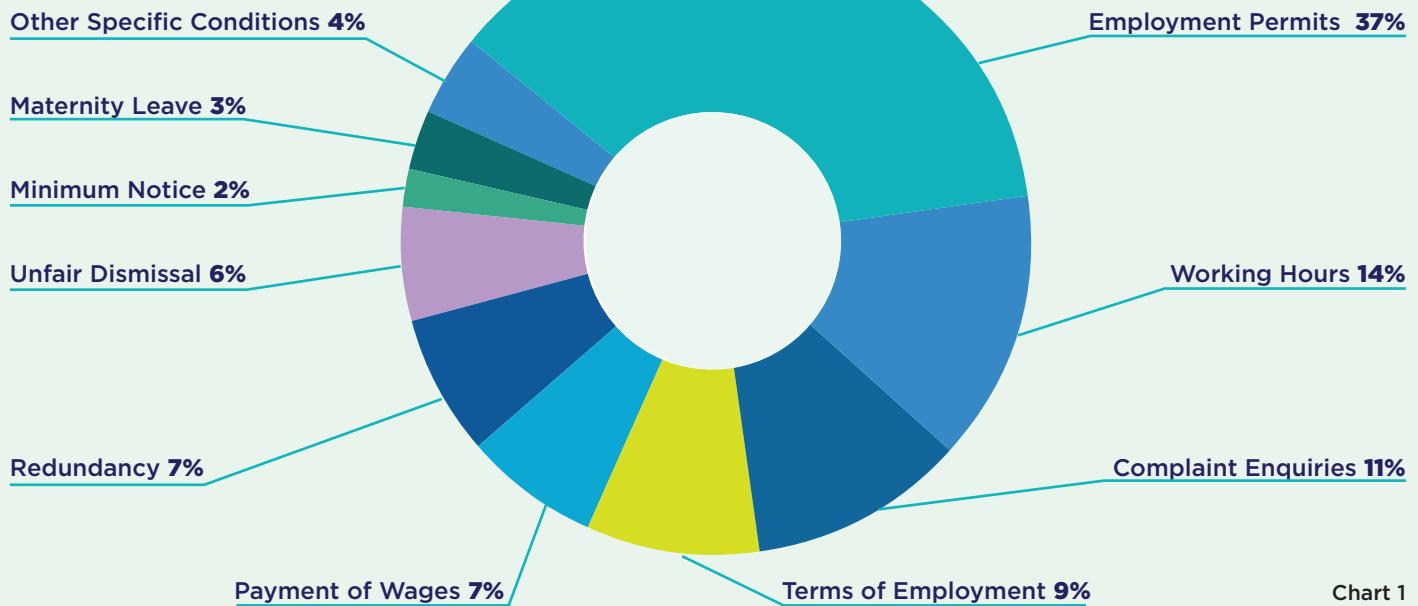


Chart 1

## SECTOR

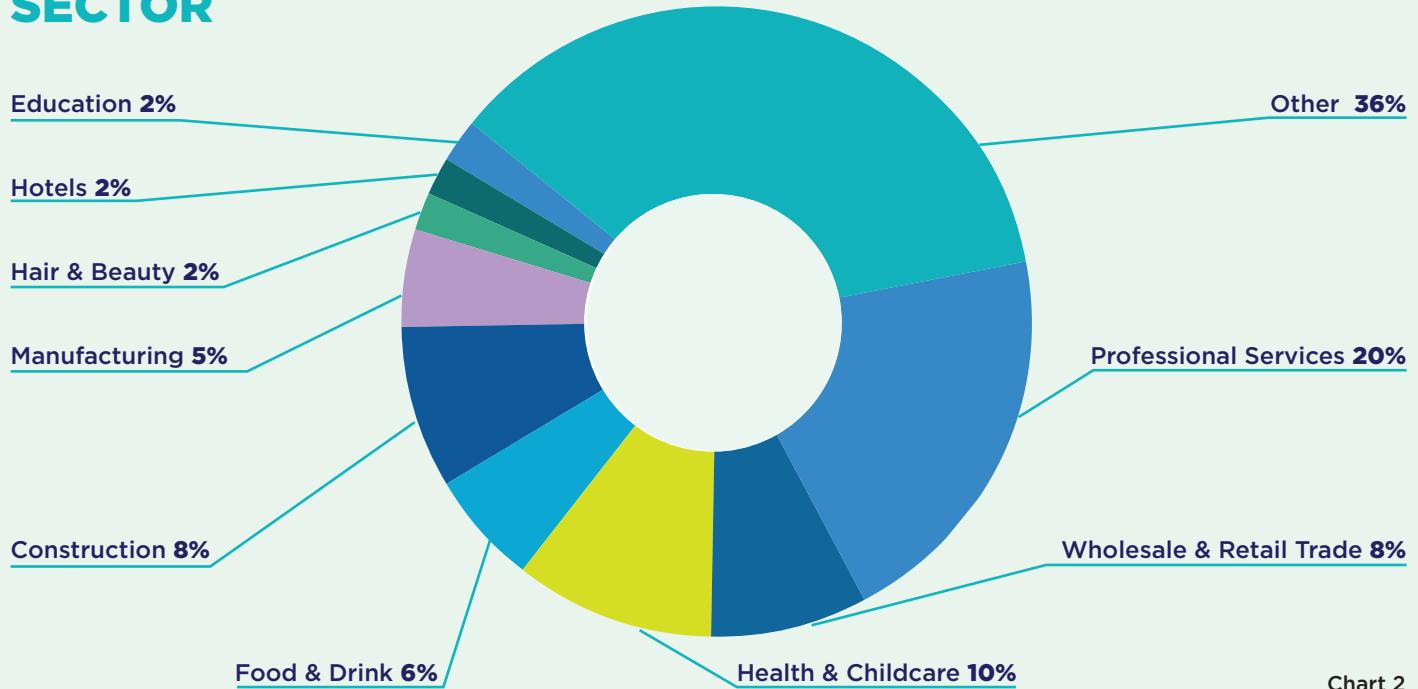
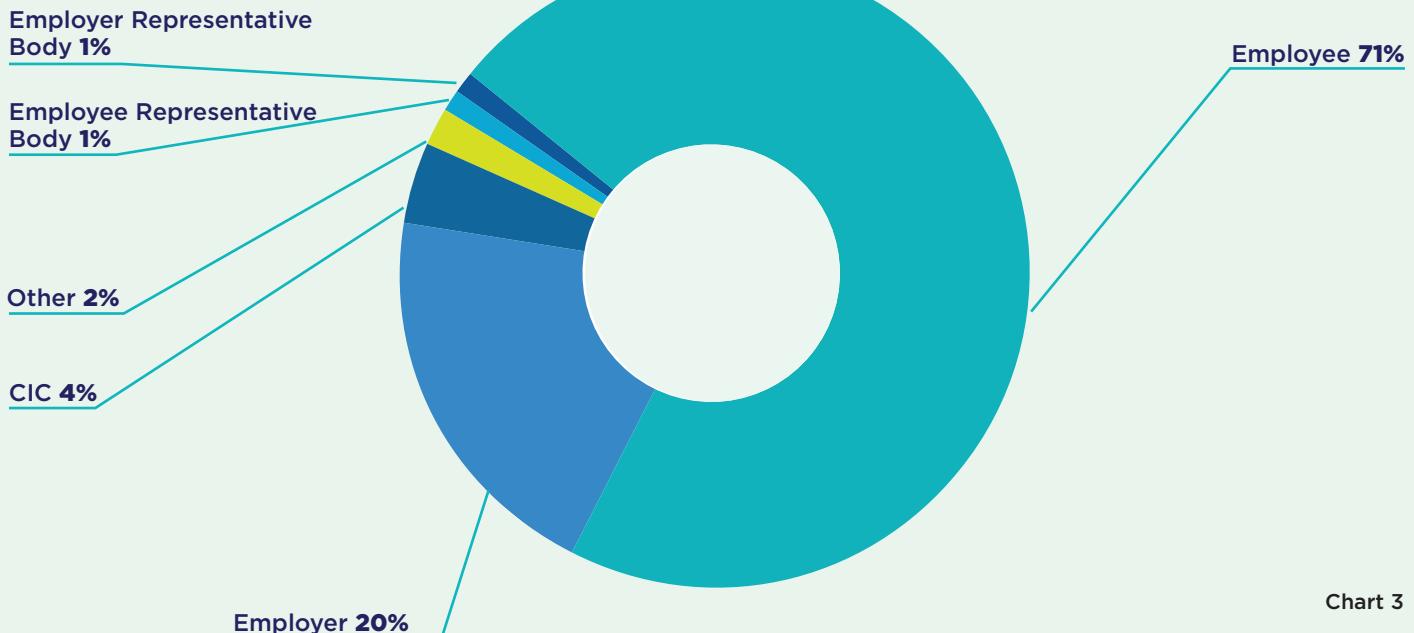


Chart 2

## CALLER TYPE



### Activity Report in Brief

#### INFORMATION SERVICES

<b>CALLS DEALT WITH</b>	<b>52,001</b>
<b>WEB PAGE VIEWS</b>	<b>2,331,338</b>
<b>E-FORMS RECEIVED</b>	<b>5,184</b>
<b>PRESENTATIONS/EXHIBITIONS</b>	<b>54</b>

Table 4

#### Protection of Young Persons and Employment Agency Licencing

During 2017, the Division issued 509 licences covering a total of 1,282 children in relation to the Protection of Young Persons. It also issued 736 employment agency licences.



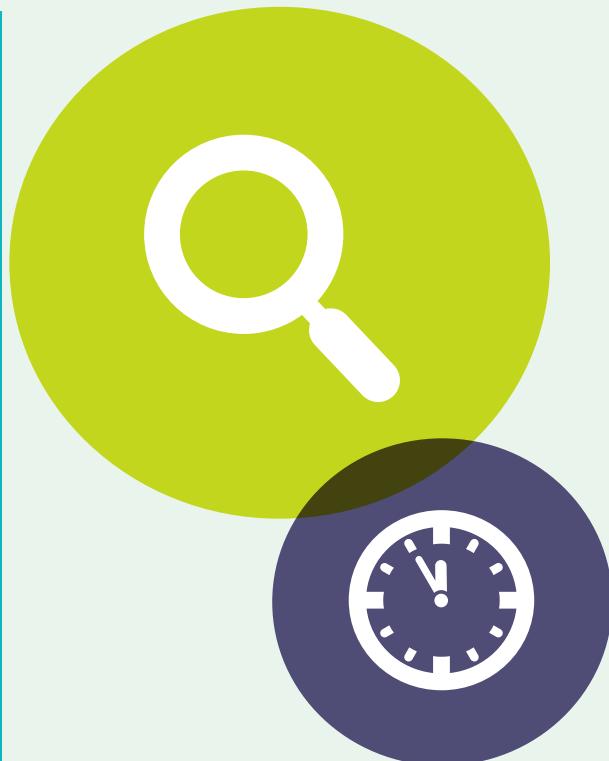
## ADVISORY SERVICE

The Advisory Service promotes good practice in the workplace by assisting and advising organisations on all aspects of industrial relations in the workplace, and engages with employers, employees and their representatives to help them develop effective industrial relations practices, procedures and structures. This service is provided across all sectors, in small and large organisations, and in those that have trade union representation and those without. It customises its advice and intervention model to the needs of the particular workplace.

### Activity 2017

#### SI 76 (“Collective Bargaining”)

The Advisory Service works with management and trades unions to resolve disputes in situations where negotiating arrangements are not in place and where collective bargaining fails to take place. This is commonly referred to as the “collective bargaining” element of the Industrial Relations Act, 2015. In such situations, the Service facilitates engagement between the parties on issues other than collective bargaining which may include terms and conditions of employment and related matters. During 2017 a total of 9 interventions took place of which three were referred to the Labour Court for resolution.



#### WRC Training

The Advisory Service oversees the delivery of training by the WRC on all aspects of the employment relationship. All training interventions are customised to the needs of the workplaces concerned. Typical training programmes delivered in the period include Dignity in the Workplace, Conflict in the Workplace, Communications, Effective Utilisation of Local Procedures, and Implementation of Change. The training is provided by staff from all Divisions of the WRC thus drawing on and maximising extensive WRC experience and knowledge in the delivery of programmes. This internal capacity resource will be substantially enhanced over the course of 2018. Significant training modules delivered during 2017 include:

- **Dignity at Work**

The Service developed and facilitated the delivery of a number of Dignity at Work training modules in 2017. These modules included education on Bullying/Harassment/Sexual Harassment/Equality and Diversity, and included education on best practice for managers and team leaders.



The training was delivered to a wide range of private sector organisations, and educational bodies, as well as to HR specialists and managers across the public and private sectors.

- **Dealing with Issues in the Workplace**

The Service developed and facilitated training initiatives for managers and team leaders.

These modules focused on the importance of early intervention, and best practice in regards to Grievance and Disciplinary procedures.

- **Conciliation/Mediation/Adjudication**

The Service delivered training workshops in relation to the work of WRC, which included best practice, when engaging with our dispute resolution services, and included education on the Conciliation/Mediation and Adjudication processes.

#### **Codes of Practice**

The WRC develops Codes of Practice setting out guidance and best practice regarding good industrial relations. In this regard, a *Code of Practice on Longer Working* was finalised by the Advisory Service in 2017 and published in January 2018. The Code sets out best practice in managing the engagement between employers and employees in the run up to retirement age including requests to work longer.

#### **Advisory Service Activity Report**

WORKPLACE INDUSTRIAL RELATIONS REVIEWS	16
FACILITATIONS	12
SI 76 "COLLECTIVE BARGAINING"	9
TRAINING	11

Table 5

#### **Research**

The WRC research programme enhances understanding of our activities and services and how well positioned workplaces are around compliance and best-practice. Following a competitive procurement process the WRC engaged the Economic and Social Research Institute (ESRI) to carry out research to determine the nature and incidence of contingent working in Ireland. Initial results of this research were presented at the February 2018 WRC conference *The World of Work: A Shifting Landscape*. The final report is due to be published shortly.



# CONCILIATION, FACILITATION AND MEDIATION SERVICES

Throughout 2017, the Division assisted parties in the resolution of industrial disputes and provided mediation across a broad spectrum of employment rights, equality rights and equal status claims

## Conciliation

### Conciliation Referrals

The Conciliation Service of the Commission played a key role in the resolution of challenging industrial relations conflict in 2017. Over the year, 942 disputes



covering the private, semi-state and public sector were referred to the Service. Some 1240 conciliation conferences were convened and an overall settlement rate of 84% was achieved.

It should be noted that in many cases referred on to the Labour Court for recommendation, the conciliation process plays a substantial role in terms of reducing the differences between the parties, thereby refining and reducing issues requiring a definitive Labour Court Recommendation. In 2017, a total of 154 disputes were referred to the Labour Court.

### Issues in Dispute

The Service dealt with disputes across a broad range of sectors across the economy. Some of the more high-profile disputes related to appropriate staffing levels or recruitment/retention of staff in the Health Service at both regional and national level. In an echo of service activity in 2016, the transport sector accounted for

several high-profile disputes processed by the WRC.

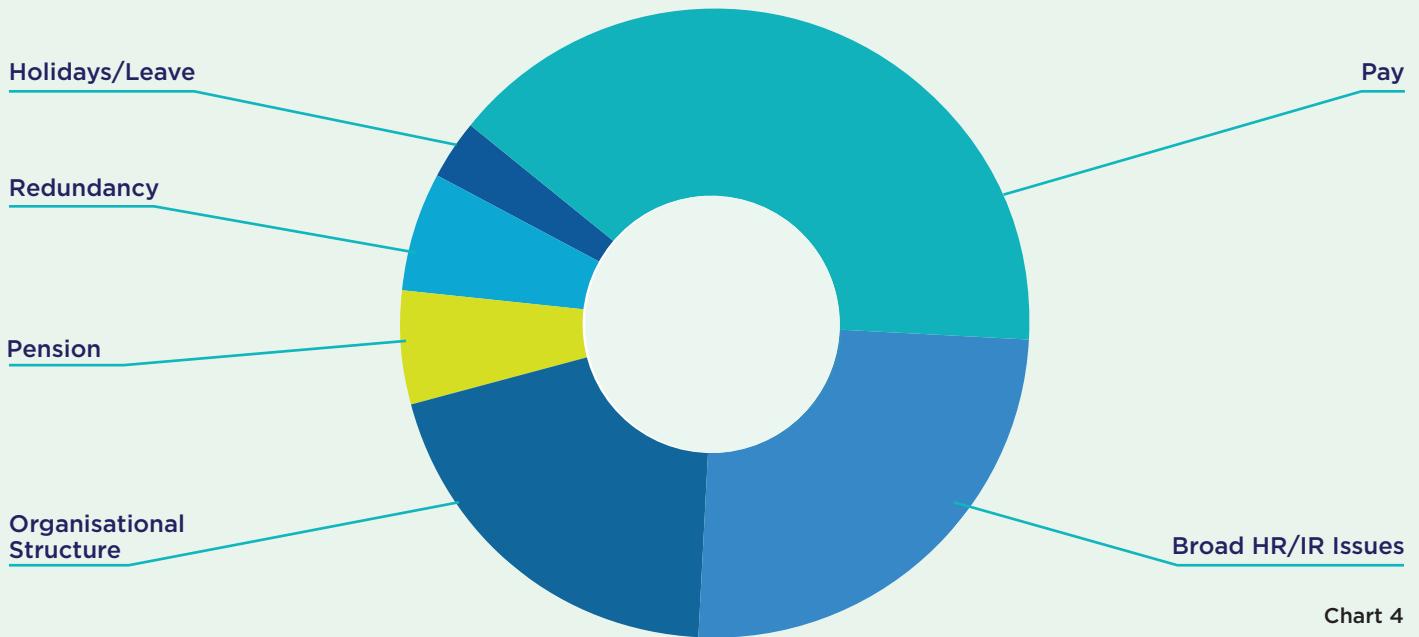
In the context of a collective resolution of issues, the most significant assistance provided during the year related to the WRC's facilitation of the *Public Sector Stability Agreement 2018-2020*. In May 2017, discussions on an extension to the Lansdowne Road Agreement discussions were facilitated by the Director General and the full team of Conciliation Officers of the WRC. These discussions, which took place over the course of three weeks, involved many plenary and bi-lateral conferences, culminated in the Commission issuing a set of proposals to the parties in early June in respect of the extension of the Lansdowne Road Agreement. These proposals (*Public Sector Stability Agreement 2018-2020*) applied to all participating parties with effect from 1 January 2018.

In terms of matters in dispute in cases referred to the WRC:

- 40% related to pay,
- 27% concerned broader human resources/industrial relations issues - grading, overtime, hours of work, shift allocation, manning levels and staffing,
- 23% related to organisational structure,
- 4% concerned pension related issues,
- 4% involved redundancy matters, and
- 2% related to holidays or other forms of leave.

The total number of employees affected by these referrals amounted to just over 1.3m persons, albeit some of these employees may have used the Service on more than one occasion.

## ISSUES REFERRED TO CONCILIATION IN 2017



### Emerging Process Issues

The Commission noted that in a small number of cases referred to conciliation, the parties themselves had done little preparatory work, and occasionally rejected the other party's negotiating position without having given it any consideration at all. In many instances, notice of industrial action had been served prior to referral.

In consequence, in addition to handling substantive disputes at conciliation, Conciliation Officers found themselves assisting with issues more appropriate to local level negotiation.

Apart from being outside the spirit of good industrial relations practice to engage proactively at local level, and to ensure that notice is served only when discussions fail, it is also a questionable use of conciliation resources. The Conciliation Service expects parties to engage proactively at local level and to ensure that issues are refined to a stage appropriate

for referral to conciliation. In 2018, the Commission will refer the majority of such disputes back to local level. Furthermore, the onus placed on the Commission in the Industrial Relations legislation is clear; only when the Commission is satisfied that no further efforts on its part will assist in the resolution of a dispute, can the dispute be referred to the Labour Court for investigation and recommendation.

### Mediation

The Service continued to promote delivery of its mediation functions and grow and increase complaint mediation delivery (predominately around employment rights claims, equal status and equality issues). This was delivered by both telephone and face-to-face interactions. In 2017, 197 face-to-face mediations were delivered and 376 telephone mediations. The face-to-face mediation total represented an 185% increase over 2016. These mediation formats achieved a combined settlement rate of 46% across the year. This had the

effect of triaging some 220 complaints away from the Adjudication Service. It is the intention of the WRC to build on this further in 2018.

The delivery of ‘workplace’ mediation services also saw an increase in requests for assistance of 50% over 2016 with 70 cases processed and provided. This mediation service is distinct from the complaint mediation service model. It is provided on *ad-hoc* basis and focuses primarily on assisting parties where issues involving interpersonal differences, difficulties in working together, breakdown in working relationship as well as issues arising from grievance and disciplinary procedure have developed.

## Facilitation

The Division saw an increase in the number of requests for assistance by means of facilitated discussion. In this regard, Conciliation Officers chaired 756 such meetings in 2017 – an increase of 445 over 2016. This work encompassed facilitating the Public Sector talks, chairing Oversight Groups within the Public Service Agreement Framework, together with the provision of Chairpersons to a range of other negotiation fora, e.g. the Health Service National Joint Council, the Teacher’s Conciliation Council, and a range of Joint Industrial Councils (e.g. Construction, Electrical, State industrial), and Joint Labour Committees e.g. (Contract Cleaning, Security).

In addition, staff of the Service continued to play a key role within the Education and Training Board (ETB) structure. Specifically, they act as Appeals Officers within the ETB Appeals Procedures in respect of their Grievance and Disciplinary Procedures and associated Bullying and Harassment Procedures and the Service processed a total of 13 such appeals within the last year. Conciliation Officers also act as Independent Appeals Officers in “Stage 4” Grievances, Disciplinary, and Bullying and Harassment complaints for staff not covered under the Industrial Relations Act 1990 working in the Association of Community and Comprehensive Schools (ACCS).

The Service also provided the Chair of the Bórd na Móna Joint Industrial Council (JIRC) established in 2015 and, during 2017, eight issues were referred to the Bórd na Móna JIRC for discussion.

In July, 2017, the Government approved changes to the existing Technological Universities Bill 2015. Discussion around the consequent changes to the Third Level Institutes were chaired by Conciliation Officers of the WRC.

Additionally, on an *ad hoc* basis, the Service provided facilitative assistance in several disputes that would not formally fall within its remit.

## Intra-WRC Collaboration

Under the auspices of the Advisory Service which is responsible for the co-ordination of the WRC’s support for stakeholders through the delivery of tailored training programmes, several officers of the Conciliation Service provided expertise, consultation and delivery of training in this area. These interventions are outlined in the Advisory Service activity report.

During 2017, the Conciliation, Facilitation and Mediation Services Division continued to respond to requests and opportunities to promote the work of the Division by providing speakers and facilitators to client training programmes with a focus on the process of conciliation and its value as a dispute resolution tool. The officers presented at and, in some cases, developed and delivered training at a range of training courses throughout the year including the Smurfit Business School, UCD, National College of Ireland, NUI Maynooth and staff employed in the HR Department of DCU.

## ADJUDICATION SERVICE

The Adjudication Service investigates disputes, grievances and claims that individuals or small groups of workers make under employment and equality legislation (Appendix 1).

Hearings before an Adjudication Officer are held in private. Following the hearing the Adjudication Officer issues a decision in accordance with the relevant legislation and the decision is issued to the parties. These decisions are published on the WRC website in a manner that does not identify the parties. The exception to this are claims taken under the Employment Equality Acts, Pensions Acts and Equal Status Acts and parties will be named on the version uploaded to the website unless the Adjudication Officer decides there is a reason to anonymise the parties.

### Complaints Submitted

Over the course of 2017, a total 7,317 complaint applications were received. These applications comprised 14,001 specific complaints, i.e., an average of nearly two separate employment legislation issues within each application. This represented a six per cent increase on 2016 overall.



## COMPLAINT APPLICATIONS 2017 v 2016

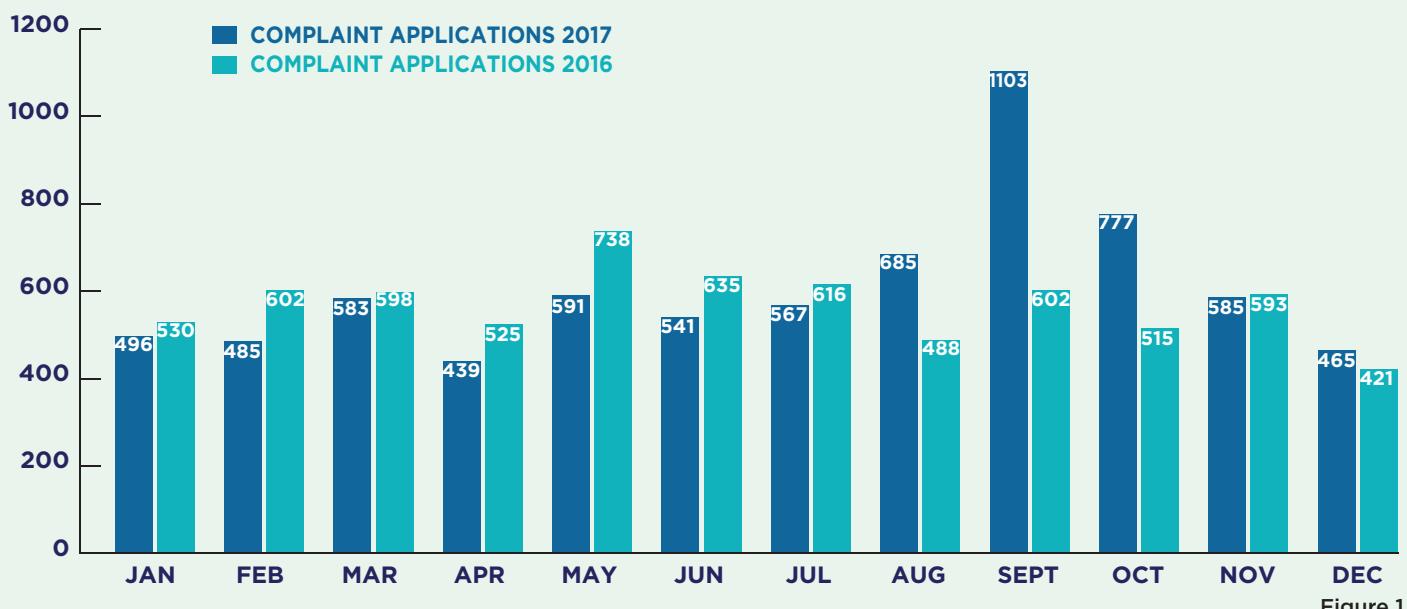


Figure 1

## SPECIFIC COMPLAINTS 2017 v 2016

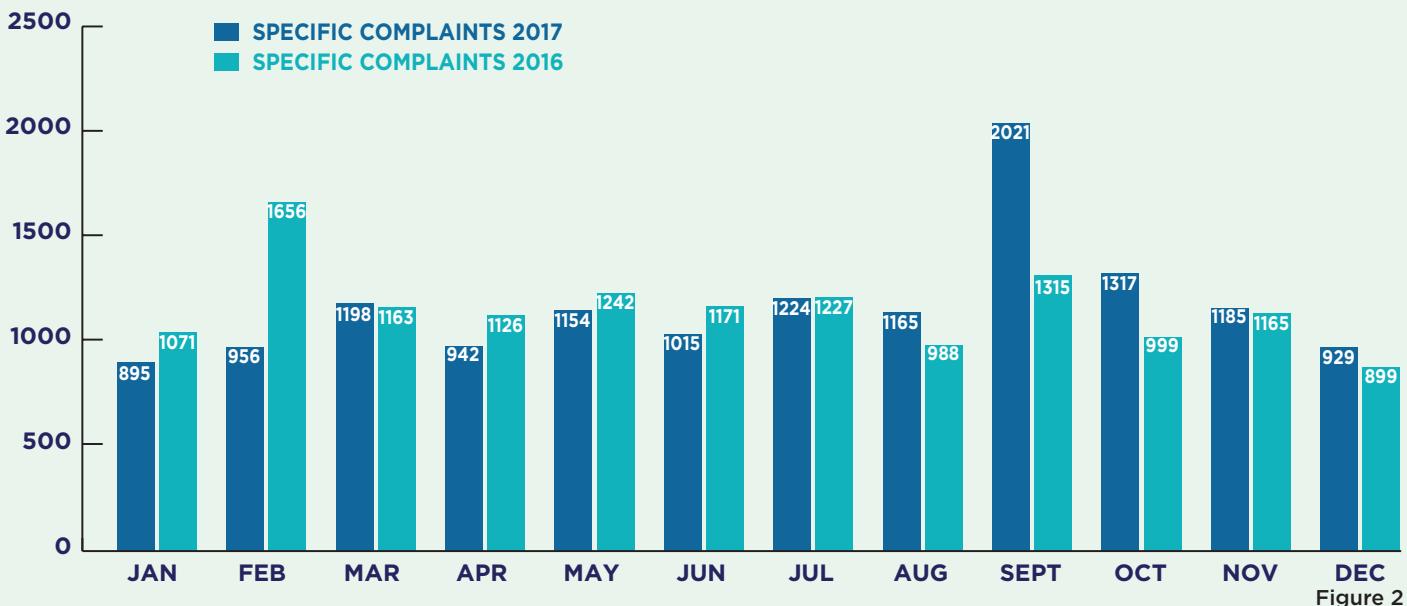


Figure 2

A significant spike occurred in September when voluminous, related complaints were referred. Many of these were submitted on a manual form which, it should be noted, caused delays in the overall registration and processing procedure generally. This was also against the general approach whereby the vast majority of complaints are now made on-line.

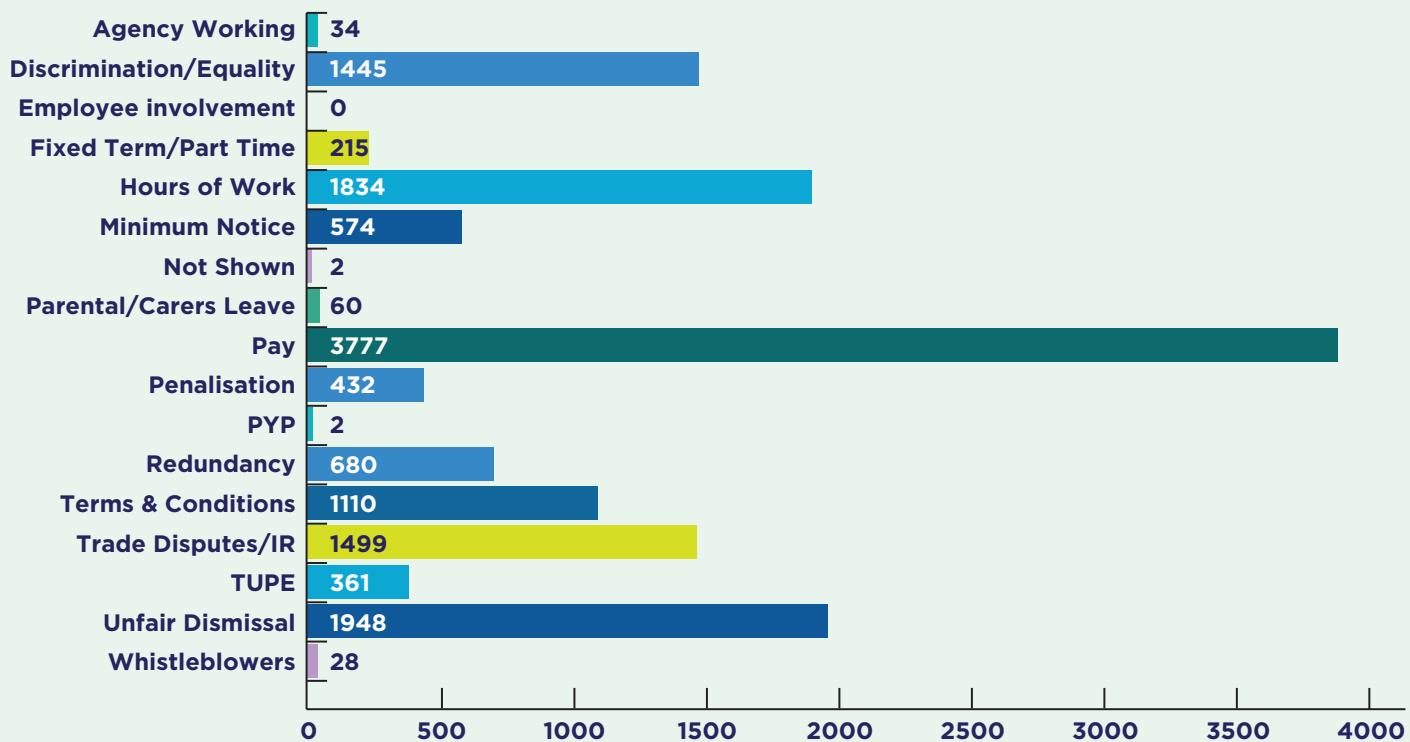
### Type of Complaint

Of the specific complaints received:

- 27% related to Pay issues,
- 14% related to Unfair Dismissal,
- 13% related to Working Time,
- 11% related to Discrimination/Equality,
- 11% related to Trade Disputes/IR issues, and
- 8% related to Terms and Conditions of Employment.



## SPECIFIC COMPLAINTS BY COMPLAINT TYPE



This pattern was in line with that of 2016.

Figure 3

The legislation basis for the submission of these claims is set out in Appendix 2.

### Complainant/Respondent Representation

Over the course of 2017, 53% of complainants were represented at hearings. Of those;

- 46% were represented by a Solicitor,
- 40% were represented by a Trade Union,
- 6% were represented by the Citizen's Information Service,
- 4% were represented by a Barrister instructed by solicitor, and
- 4% were represented by a Lay Representative/HR.

Over the same period, 42% of respondents were represented. Of those;

- 46% were represented by a Solicitor,
- 26% were represented by an Employer Representative Association,
- 24% were represented by a HR/Business Service, and
- 8% by a Barrister Instructed by Solicitor.

A very small number were represented by lay persons or the Citizen's Information Service.

As will be gathered from this, a very high proportion of complainants and respondents represent themselves throughout the process.

## Referrals Under Equal Status Acts 2000-2015

In 2017, some 668 Specific Complaints made under the Equal Status Acts compared with 658 in 2016. When making a referral, complainants must indicate at least one of the discriminatory grounds but, in practice, often indicate more than one. The table below shows how many times each ground was indicated.

While membership of the Traveller Community and Race remain the two main most commonly grounds cited, 2017 witnessed notable increases in Age and Gender while smaller increases occurred in respect of Civil Status and Housing Assistance.

### Number of Times Each Ground Indicated 2016/17

GROUND	2016	2017
AGE	13	46
CIVIL STATUS	12	18
DISABILITY	75	57
FAMILY STATUS	15	28
GENDER	20	101
MEMBERSHIP OF THE TRAVELLER COMMUNITY	416	408
RACE	462	363
RELIGION	25	20
SEXUAL ORIENTATION	7	9
HOUSING ASSISTANCE	43	63
<b>TOTAL</b>	<b>1088</b>	<b>1113</b>

Table 6

## Employment Equality Acts 1998-2011

In 2017, 671 Specific Complaints were made under the Employment Equality Acts compared with 691 in 2016. While complainants must indicate at least one of the discriminatory grounds, in many instances more than one is indicated. Table 7 illustrates how many times each ground was indicated.



The number of Civil Status claims more than doubled and Gender-related claims rose by 61% from 2016 to 2017. While the number of referrals on the other grounds showed no significant change, some uptick occurred in Race Grounds and Age. Family Status declined slightly.

### Number of Times Each Ground Indicated 2016/17

GROUND	2016	2017
AGE	127	161
CIVIL STATUS	24	52
DISABILITY	209	204
FAMILY STATUS	153	114
GENDER	219	353
MEMBERSHIP OF THE TRAVELLER COMMUNITY	5	7
RACE	154	189
RELIGION	17	9
SEXUAL ORIENTATION	21	24
<b>TOTAL</b>	<b>929</b>	<b>1113</b>

Table 7

## Pensions Act 1990

During 2017, 35 Specific Complaints were submitted under the Pensions Acts compared with nine submitted 2016. Complainants must indicate at least one of the discriminatory grounds and often indicate more than one. Table 8 sets out how many times each ground was indicated.

### Number of Times Each Ground Indicated 2016/17

GROUND	2016	2017
AGE	5	25
CIVIL STATUS	0	2
DISABILITY	4	23
FAMILY STATUS	1	1
GENDER	3	4
MEMBERSHIP OF THE TRAVELLER COMMUNITY	1	0
RACE	1	4
RELIGION	0	1
SEXUAL ORIENTATION	3	0
<b>TOTAL</b>	<b>18</b>	<b>60</b>

Table 8

The number of Pension claims reduced considerably in 2017. Age and Disability remain the most frequently cited grounds.

## Acknowledgement Times

During 2017, half (3,420) of all complaint applications complaints were acknowledged within 10 working days. The focus of the WRC in this area in 2018, subject to resource availability, is to have all complaint applications acknowledged within 10 working days.

## Hearings By Region

The busiest location in terms of hearings was Dublin (46%), Meath (9%), Cork (8%) and Galway (7%).

## HEARINGS BY HEARING REGION

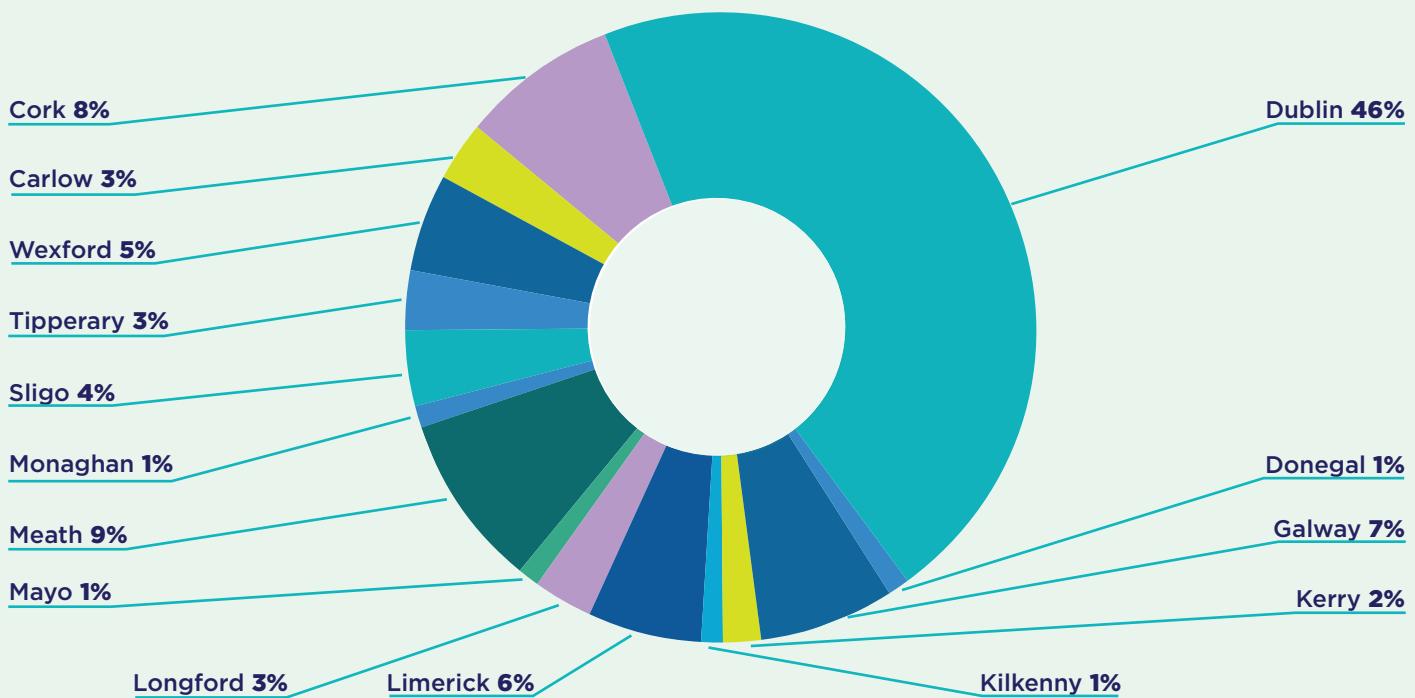


Chart 5

As part of the stakeholder engagement mentioned previously, many users felt that there were too few hearing locations with complainants and/or respondents required to travel long distances for the hearing of often minor issues. With this in mind, in July 2017, the WRC established five new hearing venues in Tralee, Letterkenny, Castlebar, Kilkenny, and Monaghan.

### Hearings Held

A total of 4,370 adjudication hearings were held in 2017. This represented an increase of 24 per cent on the 3,518 held in 2016. The chart below shows the monthly figures for the number of hearings that are scheduled and the numbers of these that are cancelled and those which proceed.

## HEARINGS 2017

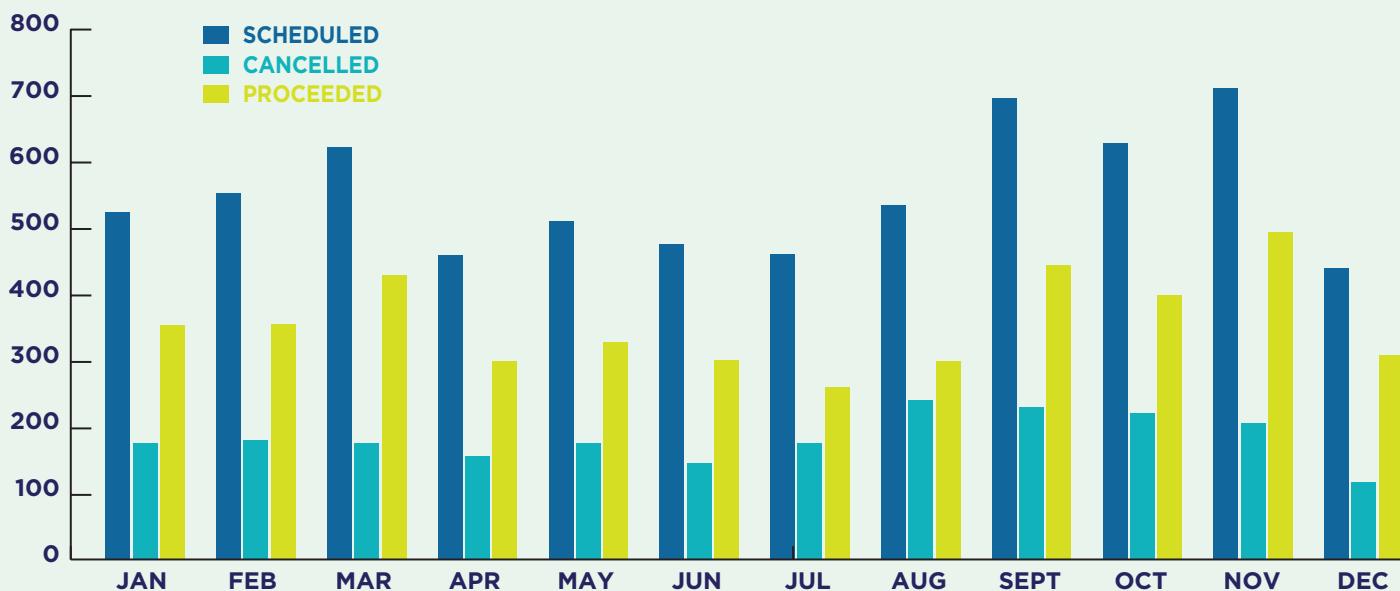


Figure 4

The number of hearings increased noticeably from July onwards and reflects the assignment of 11 additional panel and internal Adjudicators. Over the period, a number of external Adjudicators withdrew from providing a service to the WRC.

or both parties. Some instances arise where a complaint form is returned to the complainant as incomplete but no further correspondence is received.

During 2017, the majority of requests for postponements were received less than 20 days prior to the scheduled hearing, which is too late to backfill these hearing slots. This issue formed part of the discussions with stakeholders outlined later.

In addition, over the course of 2017, the WRC introduced procedures to minimise the level of postponements and this has had some effect in terms of waiting times. In this regard, however, an absolute

### Hearing Waiting Times

The average elapsed time between receipt of the associated complaint application and the hearing date is 97 days while, of complaints received since 1 January 2017, three-quarters were scheduled for hearing within six months. The reasons behind longer scheduling times arise almost entirely from unavailability of the parties or the postponement of hearings at the request of one

prohibition of postponements is neither feasible nor desirable for the users of our services.

### **Decisions Issued**

A total of 2,247 decisions issued in 2017, which is an increase of 82% on the 1,232 decisions issued in 2016, and, where no requests for postponement had been received or none granted and submissions received in a timely manner, over 90 per cent of these decisions issued within six months of the receipt of the original complaint.

### **Legacy Cases**

At establishment in October 2015, the Adjudication Service inherited responsibility for just under 4,000 "Legacy" adjudication complaints that had previously been submitted to the Rights Commissioner Service and to the Equality Tribunal but had not been dealt with at the time.

### **Employment Rights/Industrial Relations (ER/IR)**

#### **Complaints**

At the beginning of 2017 there were 903 employment rights/industrial relations complaints that had been referred to the Rights Commissioner Service awaiting hearing. This had been reduced to 5 at the end of 2017; the remainder cannot be processed further pending decisions of the Courts.

#### **Equality Tribunal**

At the beginning of 2017 some 608 Equality Tribunal referrals remained to be processed. By end-2017 this figure had declined to 293. Many of these cannot be processed pending decisions of courts; the remaining cases either have decisions in draft or are awaiting hearing.

### **Complaint Outcomes**

The following were the outcomes on Specific Complaints closed in 2017

<b>ADJUDICATED - COMPLAINT UPHELD</b>	<b>1,994</b>
<b>ADJUDICATED - COMPLAINT REJECTED</b>	<b>2,251</b>
<b>APPEALED - ADJUDICATION DECISION UPHELD</b>	<b>5</b>
<b>DISMISSED - FRIVOLOUS/VEXATIOUS</b>	<b>121</b>
<b>DISMISSED - OUT OF TIME</b>	<b>216</b>
<b>NOT ADJUDICATED - SETTLEMENT REACHED</b>	<b>126</b>
<b>RESOLVED BY MEDIATION</b>	<b>325</b>
<b>STRUCK OUT - NON-PURSUANCE</b>	<b>223</b>
<b>VALID TRADE DISPUTE SECTION 13(3) OBJECTION</b>	<b>243</b>
<b>WITHDRAWN BEFORE ADJUDICATION</b>	<b>2,333</b>
<b>WITHDRAWN DURING ADJUDICATION</b>	<b>1,664</b>
<b>WITHDRAWN AFTER ADJUDICATION</b>	<b>1,019</b>
<b>REFERRED FOR INSPECTION</b>	<b>890</b>
<b>TOTAL</b>	<b>11,410</b>

Table 9

## Labour Court Decisions

- The Labour Court issued 524 decisions in total during 2017.
- Of these 236 related to Employment and Equality Rights and 115 related to Industrial Relations.
- The Tables below indicate the Court outcome in terms of what was upheld/overturned/varied or outside time-limits.
- The remaining 173 were direct referrals/IRO/Other IR

## Employment Law

UPHELD	OVERTURNED	VARIED	OUTSIDE TIME LIMITS
120	61	50	5

## Industrial Relations

UPHELD	OVERTURNED	VARIED	OUTSIDE TIME LIMITS
51	30	34	0

Table 10

## Intra-WRC Collaboration

Adjudication Officers of the Service provided considerable support to the Advisory Service in the delivery of bespoke training over the period. In addition, Officers contributed significantly in terms of contributions and training to the work of the International Labour Organisation throughout 2017.

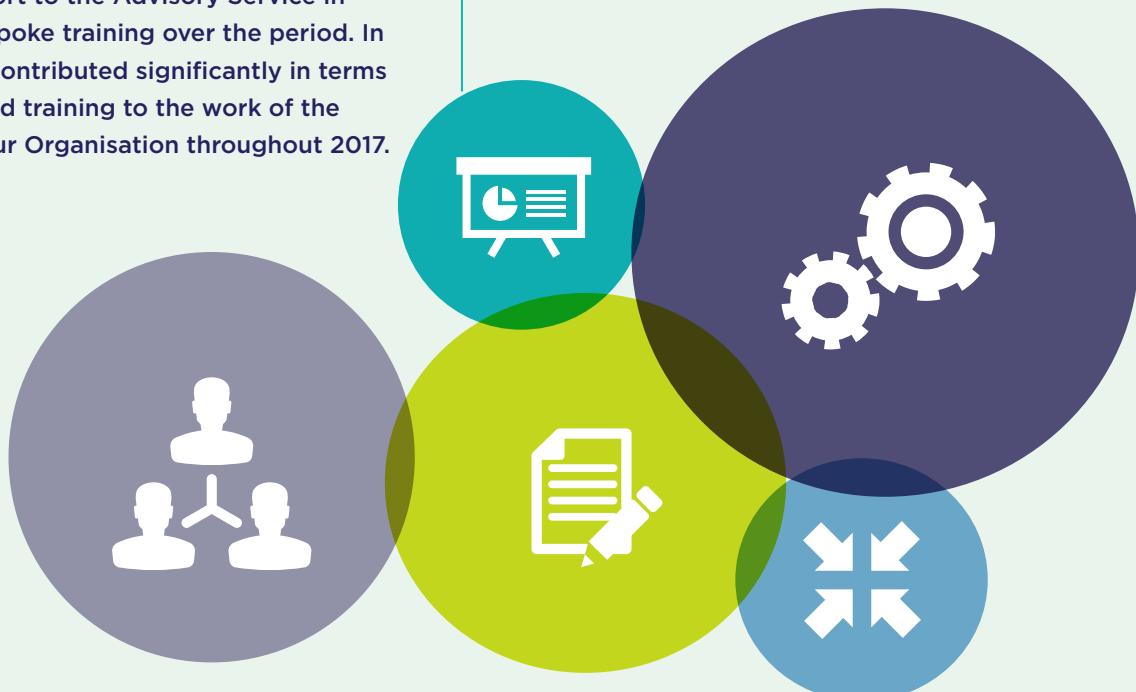
## Stakeholder Engagement

In 2017 the Service continued to engage extensively with major stakeholder bodies such as Irish Congress of Trade Unions, IBEC, ISME, legal representative bodies, and NGOs. At these meetings, the WRC responded to feedback from previous meetings and provided updates on the work of the Adjudication Service, particularly in relation to processes and procedures. This engagement continues to be important in helping us improve the service provided to our customers.

Discussions have centred on:

- processing and consideration of requests for the postponement of hearings,
- non-compliance of some parties with the requirement to submit statements within the time requested,
- linking related cases to improve process efficiency,
- consistency of hearings, consistency of decision style, and
- improving search facility of decisions on the website.

The WRC is fully committed to the stakeholder engagement process and will meet with relevant stakeholders again in 2018.



## INSPECTION AND ENFORCEMENT

Inspection and Enforcement Services monitor employment conditions to ensure compliance with and, where necessary, the enforcement of employment rights legislation. This includes redress for the employees concerned and payment of any unpaid wages arising from breaches of employment rights.

Inspectors visit places of employment and carry out inspections of employment records. This involves, but is not confined to, examining books, records and documents relating to employment, and conducting interviews with employers and with current and former employees.

Inspectors may be accompanied by other inspectors or the Gardaí. From time to time inspections are also carried out in tandem with the Garda Siochána and other regulatory bodies. Inspectors also work in Joint Investigation Units with the Department of Social Protection and the Revenue Commissioners

### Activity 2017

Over the course of 2017, the Service increasingly targeted its inspection campaigns at sectors and employers considered to be high risk in terms of statutory employment rights transgressions. The Division carried out a total of 4,747 inspections, of which 2,741 (58%) were unannounced. These inspections related to some 99,259 employees (an increase of 24,000 on 2016 and an average of almost 21 employees per employer inspection). Of the 4,747 employers inspected, some 2,032 (43%) were found to be in breach of employment legislation to some degree. By far the most common breach was the failure to keep adequate employment records (62%) followed by employment permits irregularities at 404 (17%). (See Appendix 4 for further detail).

LEGISLATIVE BREACH	TOTAL
NATIONAL MINIMUM WAGE	409
SUNDAY PREMIUM	199
INSUFFICIENT EMPLOYMENT RECORDS	1553
EMPLOYMENT PERMITS	509
PROTECTION OF YOUNG PERSONS	12
ANNUAL LEAVE/PUBLIC HOLIDAYS	321
AGENCY	10
OTHER TERMS AND CONDITIONS OF EMPLOYMENT	26
<b>TOTAL</b>	<b>3039</b>

Table 11

The sectors showing a high degree of non-compliance were Contract Cleaning (78%), Agriculture (75%), Hair and Beauty (61%), Wholesale and Retail (61%), Food and Drink (58%) and Equine (56%). Appendix 4 sets out further detail on inspection activity and outcomes.

A total of €1.77m in unpaid wages was recovered for employees during 2017 - an increase of €270,000 (18%) on 2016.

### Compliance and Fixed Payment Notices

The Workplace Relations Act 2015 makes provision for the use by the WRC of Compliance and Fixed Payment Notices. They are designed to improve compliance while, at the same time, reducing the number and associated expense of prosecuting certain breaches of legislation.

During 2017 28 Fixed Penalty Notices were issued bringing the total issued to date to 48, all in relation to failure by the employer to provide a written statement of wages. Of these, 31 (64%) have been paid in full

while another 9 are awaiting payment. A further 8 (17%) were unpaid by the due date and are proceeding to prosecution. This represents a significant efficiency dividend as, in the past, most if not all of these cases would have proceeded to prosecution with the attendant costs and administrative burden attached.

Similarly, 184 Compliance Notices were issued over the course of 2017 bringing the total to 206 issued. The majority of Compliance Notices issued were under the Organisation of Working Time Act 1997 and related to the provisions concerning annual leave, public holiday entitlement, and payment in respect of work carried out on a Sunday. There also have been a number issued under the Payment of Wages Act. Seven have been appealed to the Labour Court. A total of 79 have been finalised which included 12 cases being prosecuted.

## Prosecutions

**Compliance and Fixed Payment Notices**  
notwithstanding, there continues to be a requirement to prosecute recalcitrant employers; the WRC does so robustly. During 2017, a total of 125 cases were closed by way of prosecutions. Details of those cases where convictions were secured are attached at Appendix 5.

In this context, the WRC is empowered to press enforcement of decisions and awards arising from decisions of the WRC and Labour: 85 such cases were completed during 2017.

## Multi-Agency Collaboration

The WRC continued to work collaboratively with other government agencies. This approach enables a more comprehensive focus on employers and sectors most at risk of being non-compliant in the areas of employment rights, social protection and taxation. A total of 867 joint investigation visits were carried out by Inspectors from the WRC with their counterparts in the Revenue Commissioners and/or the Department of

Social Protection. This represented an increase of 32 per cent of such inspections over 2016.

The WRC works closely with the Garda National Immigration Bureau (GNIB) and the Garda National Protective Services Unit in terms of the reporting of potential immigration and human trafficking issues encountered during inspections. In this regard, the WRC took part in joint enforcement operations covering car washes and nail bars.

The maintenance of good working relations at an international level is an important element of the work of the WRC. There is an ongoing involvement in the training of inspectors from other EU countries and there are reciprocal arrangements for the training of our own Inspectors. During the year, the WRC provided assistance under the EU Mutual Assistance Programme to our colleagues in Romania and took part in EU peer reviews of our work.



## Sectoral Campaigns

### Equine

In 2017, the WRC initiated a two-year compliance and enforcement campaign within the equine sector (including the horse racing industry) to identify and rectify breaches where they arise and to achieve employment rights compliance overall.

Over the course of the year 73 inspections were carried out and some 228 contraventions detected (see Figure 5). Just under half of the 74 cases opened in 2017 were completed before the end of 2017 and the associated 102 contraventions addressed. The remaining contraventions will be addressed as part of the second phase of the campaign due to commence in March 2018.

## EQUINE CAMPAIGN: CONTRAVENTIONS TO 31 DECEMBER 2017

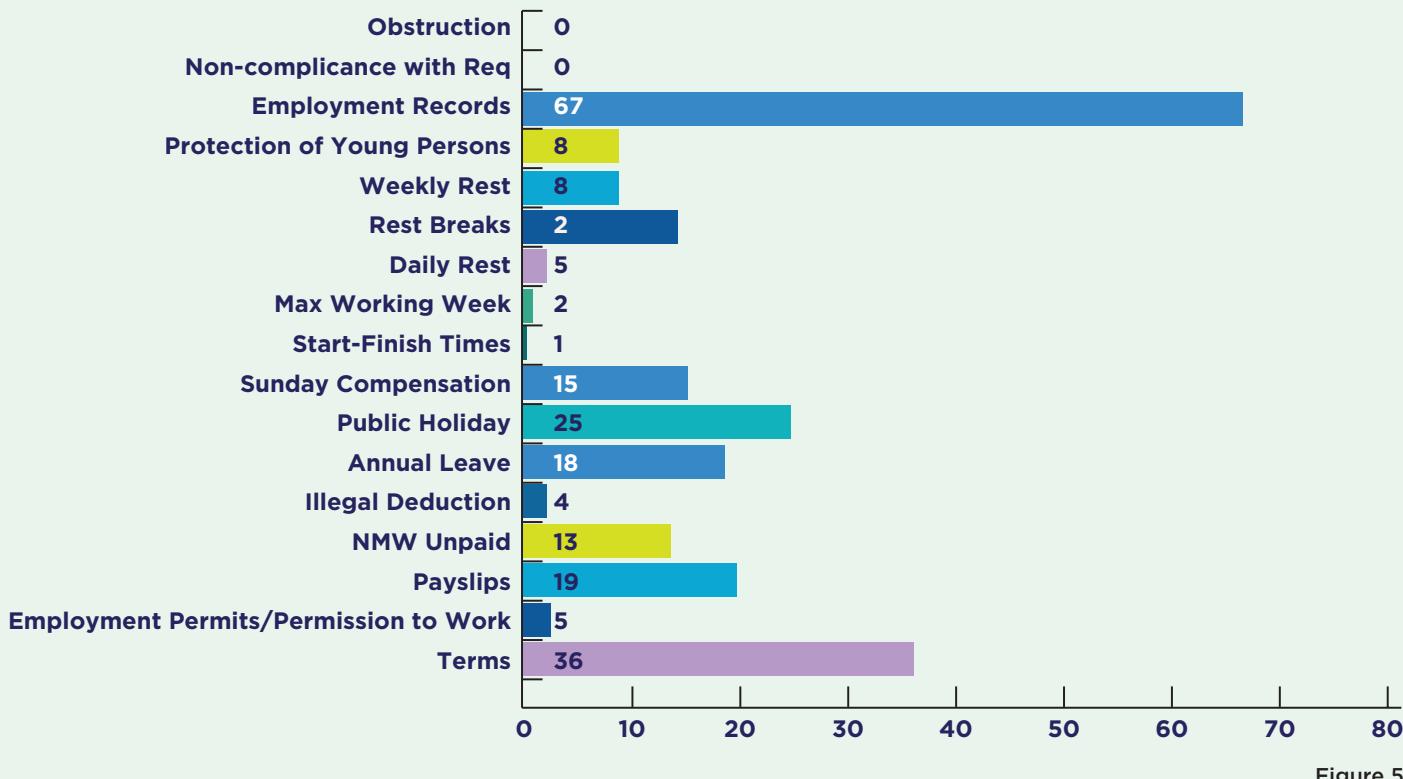


Figure 5

The WRC's activities in the equine sector include an awareness and educational programme designed with employees and employers in mind and an extensive engagement process with stakeholders. In the latter case, the WRC proposed a Working Group, comprising the WRC, Horse Racing Ireland, Horse Sport Ireland and

the Irish Thoroughbred Breeders Association, to work together and engage collectively with employers in the industry on measures to enhance compliance including the production of a guide for equine employers on employment rights and obligations. This Group was established in October, 2017.

## Fishing Sector: Atypical Worker Permission Scheme for Non-EEA Crews

Throughout 2017, WRC Inspectors continued to contribute to multi-agency efforts to support and enforce the Atypical Worker Permission Scheme for Non-EEA crews on certain Irish whitefish vessels. By end-2017, the WRC had carried out some 240 inspections and, at that stage, 95% of the 174 active or

operational vessels comprehended by the Scheme had been inspected.

Insofar as compliance levels are concerned, some 202 contraventions of employment rights and/or employment permits legislation were detected by WRC Inspectors in the period to the end of 2017.

## CONTRAVICTIONS DETECTED TO 31 DECEMBER 2017

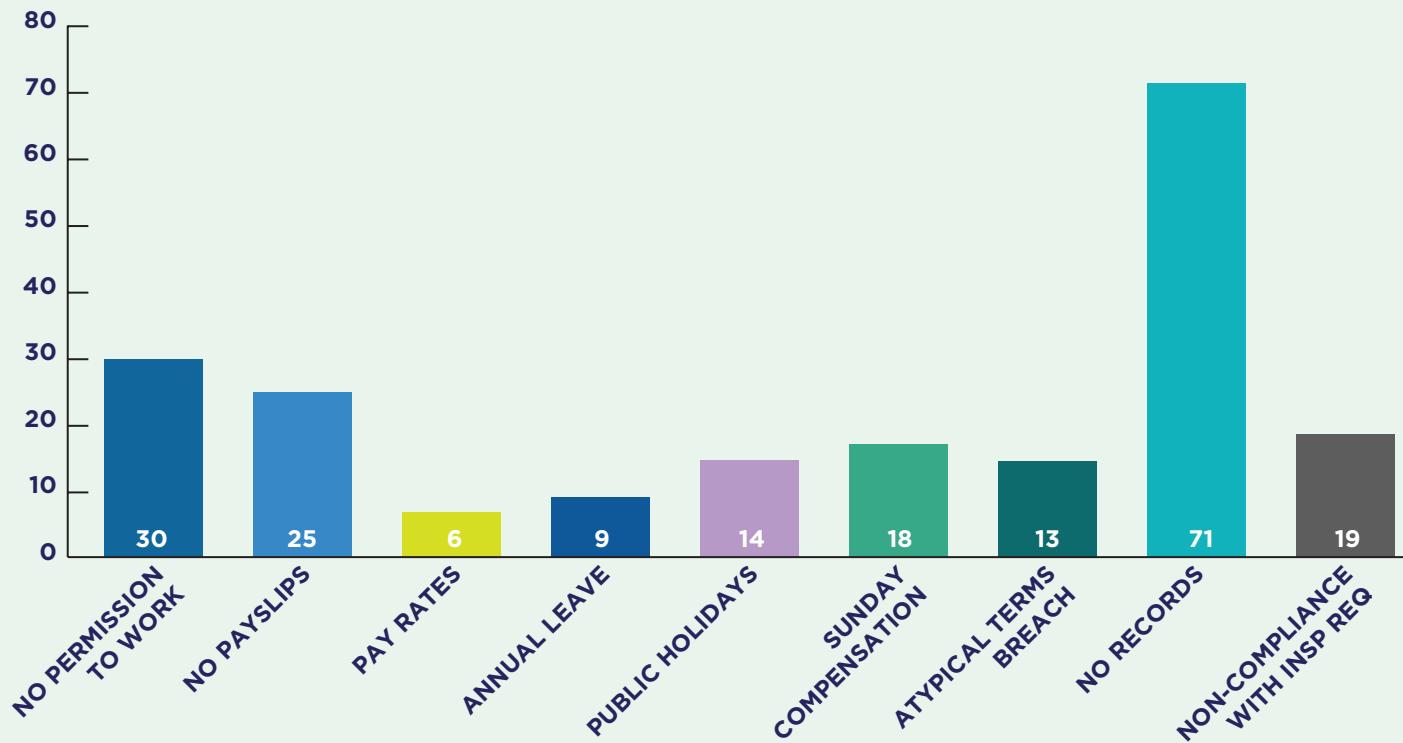


Figure 6

Compliance post-inspection is achieved through the issuing of contravention notices and/or compliance notices and/or fixed payment notices, depending on the nature of the contravention. Where this process does not achieve the required level of compliance the WRC initiates prosecution proceedings. Some

112 contravention notices were issued by the WRC to the end of 2017. One case prosecuted resulted in a conviction in 2017. Proceedings were initiated in four other cases.

As part of its on-going efforts to support compliance

awareness, the WRC attended fisheries information events hosted by the Sea Fisheries Protection Authority, liaised and cooperated with the Naval Service, the Sea Fisheries Protection Authority, the Fisheries Monitoring Centre and the Irish National Immigration Service as part of multi-agency enforcement efforts and engaged with industry stakeholders to enhance compliance.

The WRC also appeared before the Select Committee on Jobs, Enterprise and Innovation in September 2017 to assist the Committee in its examination of the Atypical Scheme.

### **Other Campaigns**

The WRC Inspectorate is part of the EUROPOL *Empact Labour Exploitation Group*. This Group comprises Labour Inspectors and police forces across Europe to facilitate the exchange of information and the development of good practice to help combat forced labour and human trafficking. As part of the Group's coordinated programme for 2017, the WRC carried out

targeted inspections in "Pop Up" Car Washes and Nail Bars.

During the week of 15-19 May, 2017, some 81 inspections of nail bars throughout Ireland were undertaken by WRC inspectors. Of these, 8 were carried out alongside An Garda Síochána, and 11 took place in conjunction with the Revenue Commissioners and staff of the Department of Employment and Social Protection. In 35 of the premises visited, WRC inspectors detected employment law breaches, including 11 breaches of employment permits legislation.

In November 2017, 'Pop-Up' Car Washes were subject to a focused campaign of inspections as a local follow up to a previous EUROPOL Empact compliance action in 2016. 101 sites were visited and significant instances of non-compliance with employment law were uncovered, particularly in 43 cases where breaches of the Organisation of Working Time Act were detected.

## CORPORATE SERVICE

### Service Expansion

In June, 2017 the Sligo Regional Services Office was opened. It represented the first step in the WRC strategy of providing its full range of services across all its regional offices. Prior to the Sligo opening, the office of the WRC in Lansdowne House in Dublin was the sole location where advisory, conciliation, mediation, and adjudication was provided. As part of this process a regionally-based mediator was appointed in Sligo at the same time.

This initiative is being rolled out across the other regional locations with Cork and Shannon currently in process.



Joe McHugh T.D. Minister of State at the Department of Culture with responsibility for Gaeilge, Gaeltacht and the Islands, WRC Director General Oonagh Buckley, and Tony McLoughlin T.D., at opening of WRC Sligo Office June 2017

### New Hearing Locations

In 2017, following submissions from stakeholders concerning the time taken to travel to hearings on the part of complainants and respondents, the WRC expanded the number of its hearing venues by way of the addition of new locations in Donegal, Mayo, Kerry, Monaghan and Kilkenny. In addition, in mid-June 2017, the WRC, working with the Courts Service initiated a review of suitable courthouses that could, subject to capacity, facilitate WRC adjudication hearings in current or new locations. If suitable premises are identified, this could have the benefit both of reducing operational costs in terms of room hire and providing additional hearing locations at little or no cost to the WRC.

### Customer Survey

During 2017, the WRC carried out a comprehensive customer survey across all our services. This involved contact with over 2,500 stakeholders. The survey was carried out to obtain feedback on customers views of their engagement with the WRC to ensure a high standard of services had been delivered and continue to be delivered into the future. It is the intention of the WRC to carry out this survey annually.



## Data Protection

In preparation for the entry into force of the General Data Protection Regulation (GDPR) in May 2018, the WRC established in 2017 a high level oversight committee and individual Divisional groups to review data collected, purpose of collection, data retention periods, data security etc. The Commission assigned the WRC Legal Advisor as Data Protection Officer for GDPR purposes in 2017.

## Technology

The WRC's dedicated Business Solutions Services continued to both support and advise line operations on the efficient and effective delivery of WRC services and directly project manage certain initiatives. The priorities included progressing e-delivery, undertaking business process analysis and reviews, winding down legacy business applications, enhancing management reporting, driving change and leveraging more from the CRM (Customer Relationship Management) technology platform. Projects in progress include plans to upgrade back office processing which will improve efficiency and service delivery in relation to Inspection, Conciliation, and Mediation Services.

In 2017, the WRC prepared a request for tender in terms of upgrading the WRC website to improve user experience, search facility and information provision. It is anticipated that the revised website will be live by mid-2018.

## Governance

The WRC ensures that our activity and resources are applied in the most efficient and effective manner in compliance with Civil Service governance requirements. This includes regular ongoing monitoring of progress against business plans, regular review of the risk environment and where possible action to mitigate potential risks.

A comprehensive HR policy is being implemented to ensure continued delivery of services of the highest standard. Staff capacity, skills, engagement and well-being are being reviewed and enhanced on an ongoing basis to ensure stakeholder requirements are met. Like all other public service bodies, the WRC faces challenges around succession planning. To help meet this challenge, the WRC has appointed a Head of HR to drive forward the implementation of the HR Plan and workforce planning generally.



# WORK PROGRAMME 2017

## OUR PERFORMANCE

### Work Programme Requirement

Section 22(1) of the Workplace Relations Act 2015 provides that the Board, after consultation with the Director General, shall prepare and submit to the Minister, a Work Programme of the activities that the

Commission intends to carry out in the year to which the Programme relates. Such a Programme must be submitted to the Minister for Business, Enterprise and Innovation by 1 December every calendar year.

Our performance against the 2017 Plan targets is set out below.

### Advisory Division

Work Programme Objectives	Actions/Tasks	Delivery Timeframe	Key Performance Indicators	2017 Performance
Improve site-specific workplace relations	Carry out reviews of industrial relations, chair joint working parties, facilitate resolution of individual disputes including referrals under the IR Act 2015  Facilitate voluntary dispute resolution, deliver workplace mediation and equality mediation services	Throughout 2017	Effective, tailored programme delivery, high client satisfaction, and improved relations	Delivered within agreed timelines; high customer satisfaction as recorded in customer feedback  Service delivered where requested and issues resolved where possible
Provide workplace training	Develop bespoke training programmes for clients etc.	Throughout 2017	High success rate and customer satisfaction with service	Training delivered; high customer satisfaction
Initiate the enhancement and broadening of the remit of the Frequent Users Programme	Roll out the frequent user programme for Adjudication Division across all Divisions	Q217	Consequent reduction in WRC resource allocation arising directly from this initiative	Analysis concluded – frequent users identified

## Conciliation/Early Resolution/Mediation Division

Work Programme Objectives	Actions/Tasks	Delivery Timeframe	Key Performance Indicators	2017 Performance
Provide timely, effective and efficient Conciliation service and ensure demand is met whilst maintaining delivery of all services	Provide conciliation in an appropriate timeframe to facilitate resolution of industrial relations disputes. Proactively engage with clients to assist in providing assistance in the maintenance of positive industrial relations	As and when required by clients throughout 2017	Maintenance of high success rate in the resolution of industrial relations disputes	Conciliations held in appropriate timeframe: 84% settlement rate
Enhance client usage of relevant mediation services of WRC	Enhance bespoke services in consultation with stakeholders and in light of customer survey results	Q217	Enhanced delivery and increased usage of mediation services	Regional mediator appointed. Face-to- Face mediation increased by 185%
Provide a range of complementary mediation services in both employment rights and workplace relations disputes	Facilitate and deliver voluntary participation in mediation processes	Throughout 2017 and within 3 weeks of acceptance by all parties to engage in mediation process dealing with employment rights claims	Cases triaged effectively and efficiently to bring about an overall reduction in numbers advancing to adjudication process in employment rights claims.  High customer satisfaction with workplace relations mediation service	220 complaints triaged from Adjudication. Customer Survey indicated high satisfaction rates
Chair and facilitate various different industrial relations and statutory fora in both the private and public sector	Facilitate discussions in a timely fashion. Assist parties deal with all issues in accordance with procedures and operations as set in both voluntary and statutory requirements	Throughout 2017	Effective delivery and operation of all issues raised in accordance with protocols and procedures	Facilitation delivered effectively on 756 occasions
Ensure effective two-way communication with primary clients	Maintain effective dialogue with key clients in all regions and nationally	At all times during 2017	Effective operation of communication channels maintained	Clients communicated with regularly and effectively

## Adjudication Division

Work Programme Objectives	Actions/Tasks	Delivery Timeframe	Key Performance Indicators	2017 Performance
Deal with post-establishment complaints within established timelines and ensure that current demand is met while clearing all pre-establishment complaints during the year	Oversee efficient and effective throughput of cases through registration, hearing and adjudication	Throughout 2017	Throughput at levels agreed in the Memorandum of Understanding with the Department	Pre-establishment balance reduced to 295, 24% increase in number of hearings, 75% of hearings within 6 months, over 90% of current cases processed within 6 months - absent request for postponement, etc.
Deliver high quality decisions	<p>Monitor and review quantity and availability of adjudicators to ensure delivery capacity.</p> <p>Internal Quality Control Review Group will review decisions to identify learning points, to ensure consistency of decisions in common areas, to improve the service provided to customers of the Adjudication Service. In addition, feedback on decisions appealed to the Labour Court will be formalised.</p> <p>Maintain and improve internal structures to assist Adjudicators in researching and writing decisions</p>	<p>Throughout 2017</p> <p>Throughout 2017</p>	<p>Sufficient adjudicators available consistently</p> <p>High quality decisions with declining number of appeals and judicial reviews Internally and externally recognised and delivered WRC adjudication standard</p>	<p>Monitored and reviewed, new cadre in situ July 2017</p> <p>QC Group reviewed and made recommendations. Consistency of hearings and decisions improved. Labour Court presents regularly at Adjudicator training</p> <p>Structures in place and functioning</p>
Ensure ICT system facilitates the delivery of efficient and effective adjudication and mediation services	Review quarterly and update where needed the Complaints & Adjudication Solution IT System	Throughout 2017	Easy to use ICT system working efficiently and effectively	System updated regularly, improved interface with users

## Inspection & Enforcement Division

Work Programme Objectives	Actions/Tasks	Delivery Timeframe	Key Performance Indicators	2017 Performance
Promote and enforce compliance with employment law	<p>Risk-based inspections, complaint-based inspections, with other State bodies where appropriate</p> <p>Prosecute, as appropriate, offences of non-compliance with employment legislation</p> <p>Maintain standard process with regard to and measure effectiveness of issuing and processing of Compliance and Fixed Charge notices</p> <p>Regular engagement with stakeholders</p>	<p>Throughout 2017</p> <p>Throughout 2017</p> <p>Throughout 2017</p> <p>Throughout 2017</p>	<p>3,800 Inspections concluded incl. 2,000 unannounced work-place visits</p> <p>A 90% successful prosecution rate</p> <p>Notices issued appropriately and having effect. Review and evaluation of process by end-2017</p> <p>Key stakeholders met at least once yearly</p>	<p>4,747 inspections concluded, 2,741 unannounced visits</p> <p>96% successful prosecution rate</p> <p>Over 50% of notices paid or complied with – many still in process. Review completed – under consideration</p> <p>Regular meetings with stakeholders</p>
Enforce awards arising from decisions of adjudication and Labour Court proceedings	Press enforcement of decisions and awards arising from decisions of adjudication and Labour Court in relation to adjudication and inspection activity	Throughout 2017	Decisions and awards pursued in manner that maximises efficiency and effectiveness	85 cases completed
Issue licences and enforce legislation in relation to Employment Agencies and the employment of Young Persons	Licenses processed and issued in an efficient and lawful manner	Throughout 2017	700 licences issued	726 Employment Agency and 509 Young Persons Employment licences issued
Co-operate with other enforcement agencies	Review existing MOUs and agree two additional MoUs with appropriate bodies	Throughout 2017 required	Review/Conclude by end-2017	Existing MoUs reviewed; negotiations on Revenue MoU commenced
Drive Value through technology	Develop and roll out ERCES system for Division	Q317	New administrative system operating successfully delivering significant resource and processing efficiencies	System designed and under construction

## Information, Customer Service and Central Processing

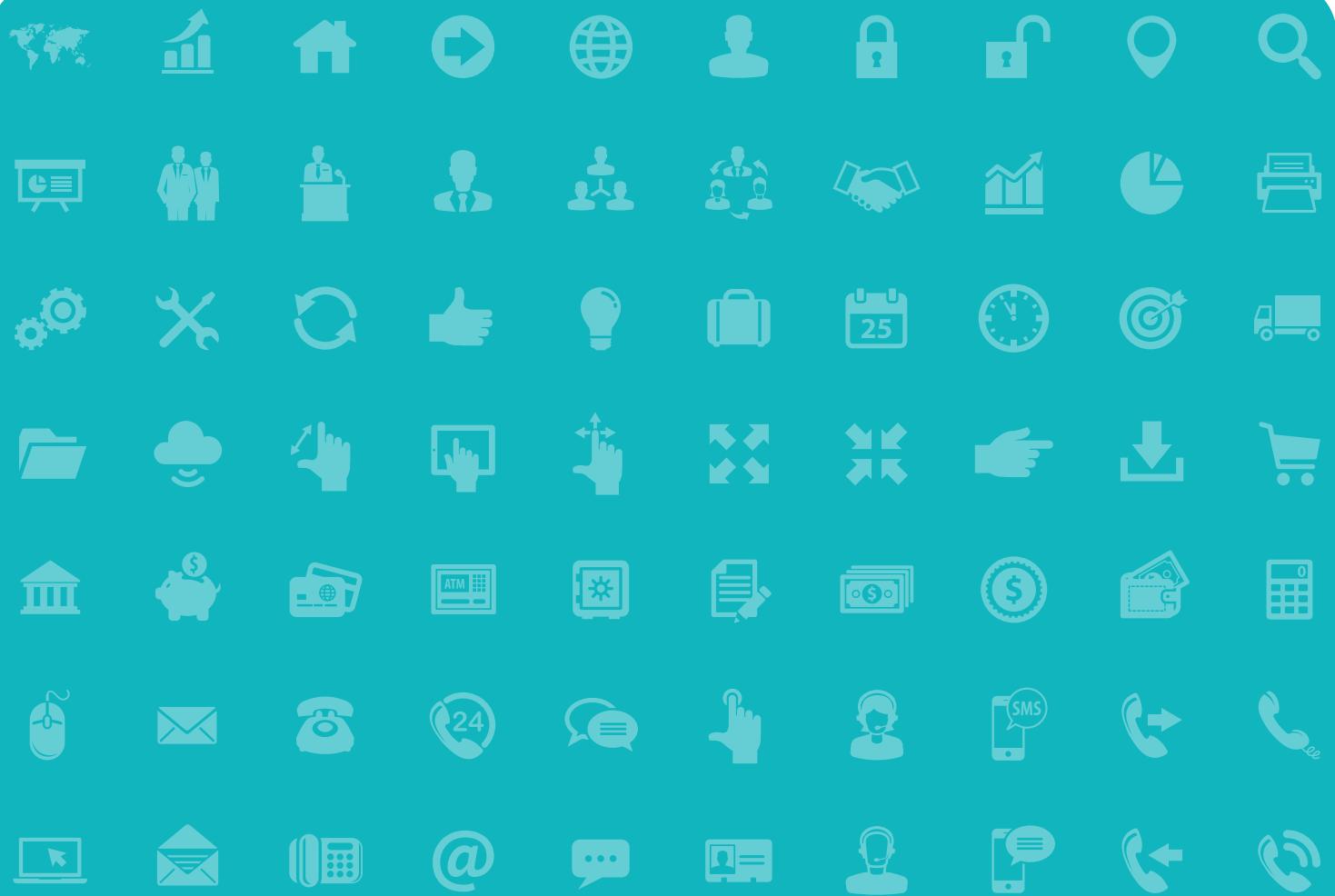
Work Programme Objectives	Actions/Tasks	Delivery Timeframe	Key Performance Indicators	2017 Performance
Provide non-directive information on WRC activities generally, employment legislation and redress mechanisms through a variety of delivery formats	<p>Provide a high quality accessible, customer-focused and user-friendly response to telephone, email, white mail and other employment rights enquiries</p> <p>Participate in and deliver employment law seminars, presentations, exhibitions, roadshows</p> <p>Update and republish information material to reflect new corporate identity and legislative changes</p>	Throughout 2017	<p>90% of queries dealt with at initial query</p> <p>Attend/participate in 50 events</p> <p>Full range of publications updated by March 2017</p>	<p>95% dealt with at initial query. High satisfaction rate in Customer Survey</p> <p>54 presentations and exhibitions</p> <p>New publications designed and published</p>
Efficient processing of complaints and applications to the WRC	All complaints processed in a timely and efficient manner and referred to the appropriate redress forum	Throughout 2017	15,000 complaints processed efficiently and effectively	14,001 complaints received – all processed

## Registrar/Legal Advisor

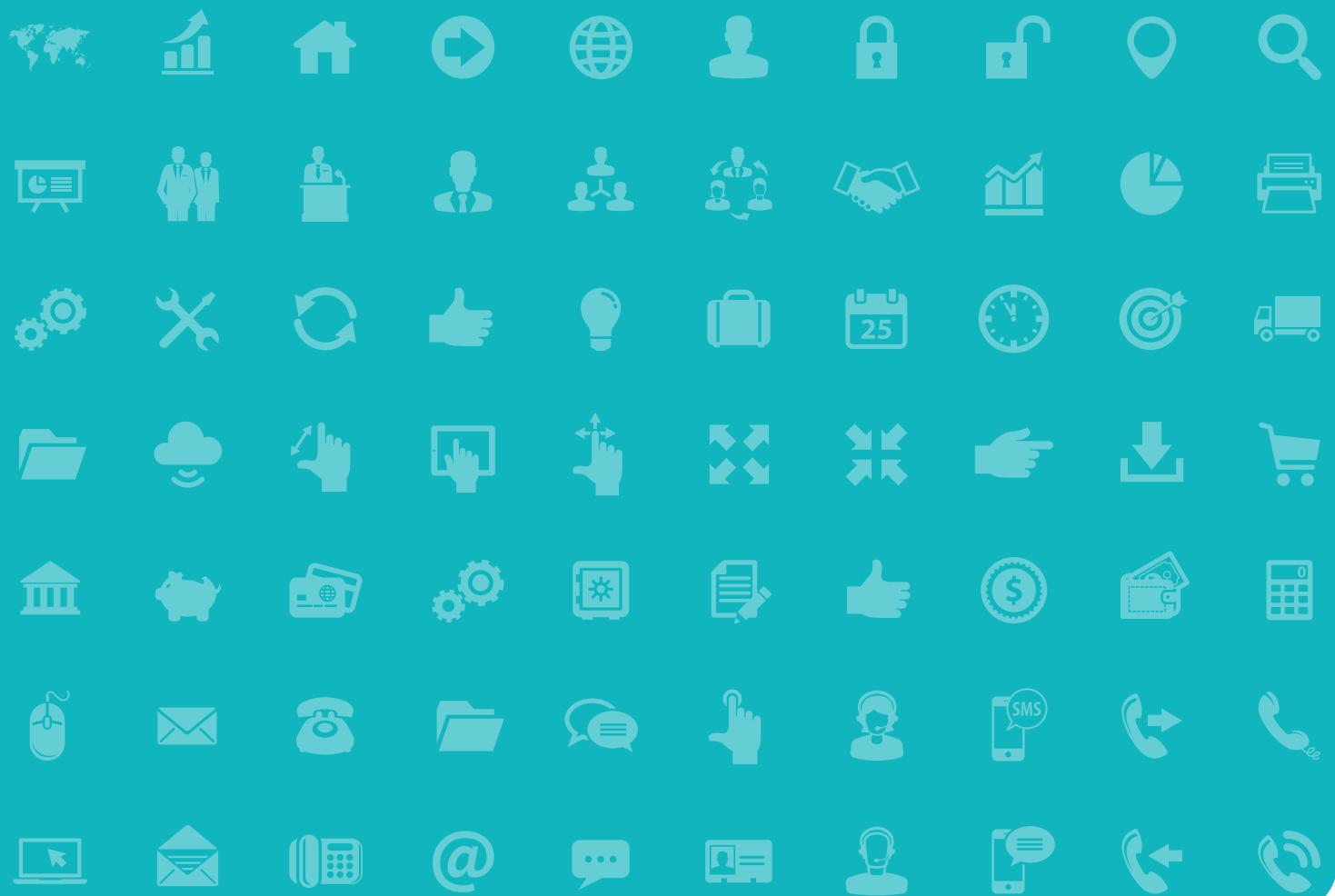
Work Programme Objectives	Actions/Tasks	Delivery Timeframe	Key Performance Indicators	2017 Performance
WRC legal service operating effectively and efficiently	Structures, procedures, and business processes operating efficiently	Throughout 2017	Legal service established and fully functional.	Fully functioning
Provide appropriate legal training to staff and adjudicators - legally sound approach to all activities of WRC	Identify training structures, training needs and deliver	Throughout 2017	Training structures in place learning being implemented	Training provided to Adjudicators and cross-Divisional WRC staff
Manage legal services used within the WRC	Provide for legal services where appropriate (including panels for legal advice where appropriate)	Throughout 2017	Systems functioning effectively	Systems functioning effectively
Manage and provide for timely, effective and robust legal advice on all aspects of legal matters before the WRC	Consider correspondence, provide advice, brief Counsel where necessary, manage case progress and outcome	Throughout 2017	WRC manages legal matters effectively and efficiently.	Legal matters managed effectively and efficiently on a case-by-case basis
Develop and maintain a specialised database and library facility for Adjudicators and WRC staff generally	Ensure appropriate access to relevant external databases such as Westlaw, Bailii, etc. develop internal database on all aspects employment and equality law, and establish virtual and physical library	Q1 2017	Databases and library in place and fully utilised	CAS database regularly updated and functioning and library utilised fully
Set and manage legal costs within budget parameters	Monitor spend on legal costs/ identify efficiencies	Throughout 2017	Legal Costs managed effectively, efficiently and within budget	Costs managed within total budget

## Corporate Division

Work Programme Objectives	Actions/Tasks	Delivery Timeframe	Key Performance Indicators	2017 Performance
Maintain robust corporate governance framework in WRC	Oversee and monitor internal standards, policies, and procedures	Throughput 2017	Corporate governance in WRC in line with best practice	Procedures and practices monitored and updated as appropriate
Ensure WRC carries out statutory functions within budget	Oversee efficient and effective expenditure, monitor service demand and activity levels and liaise regularly with DJEI in this regard	Throughout 2017	Work programme being achieved consistent with proper utilisation of budget allocation	Estimates, receipts, and expenditure carried out and reported appropriately
Begin roll out of WRC HR strategy and policy that fully supports the activities of the WRC and supports and develops its staff	Roll out WRC-specific HR practices including performance-focused workforce planning, learning and development initiatives, and staff support systems etc.	Throughout 2017	HR Policy that supports achievement of WRC mission and goals and supports and develops staff fully operational	Head of HR appointed; HR Plan staged roll out underway
Manage the WRC risk-based strategic, business planning performance culture at all levels of the organisation	Assist in deliberation around and the implementation of Board strategy and work programme and roll out via Corporate, Divisional, Unit and personal business plans, measure and take remedial action against risks and report on progress to MC and Board on a regular basis	Throughout 2017	WRC fully operating within coherent strategic and business plan framework	Business Plans and Risk Registers reviewed regularly against Strategy and Work Programme – reported to Board
Achieve Customer Brand Recognition	Develop and begin roll out of a communications strategy to project the WRC organisational identity and fully market the range of services on offer	Q117	WRC Brand fixed in stakeholder consciousness – evaluated by a range of mechanisms (customer/general surveys, stakeholder engagement etc.)	Communications Strategy developed and implemented. High profile media exercises undertaken. Customer Survey indicates brand awareness
Drive Value through technology	Initiate redevelopment of interactive and process-driven website	Q217	Website will provide for deliver clear brand recognition, enhance customer service and deliver considerable process efficiencies	Current website upgraded significantly. RFT agreed for revised site and project underway
Enhance and inform the policy debate on workplace relations developments	Identify areas of policy concern and input to policy formulation  Publish Regular Commentaries/Data on WRC activities that contain clear and focused data presentation	Throughout 2017	Regular relevant commentaries and reports published  Enhanced understanding of WRC activities and services and of how well positioned workplaces are around compliance and best-practice	Research on Contingent Work commissioned  Commentary on Adjudication users and experience published. Update on Equine campaign published.



## APPENDICES



# APPENDIX ONE

## LEGISLATION BY WHICH COMPLAINTS MAY BE SUBMITTED TO THE AJUDICATION SERVICE

• Organisation of Working Time Act 1997	• Regulation 9(4) of the European Communities (Occurrence Reporting in Civil Aviation) Regulations 2007 (S.I. No. 285 of 2007)
• Unfair Dismissal Acts	• Competition Act 2002
• Industrial Relations Acts	• Carer's Leave Act 2001
• Payment of Wages Act 1991	• Protections for Persons Reporting Child Abuse Act 1998
• Terms of Employment (Information) Act 1994	• Protection of Employees (Employers' Insolvency Act, 1984)
• Redundancy Payments Acts	• National Asset Management Agency Act 2009
• Employment Equality Acts	• Chemicals Act 2008
• Minimum Notice and Terms of Employment Act 1973	• Regulation 19 of the European Communities (European Public Limited - Liability Company) (Employee Involvement) Regulations 2006 (S.I. No. 623 of 2006)
• European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 (S.I. No. 131 of 2003) (other than Regulation 4(4) (a))	• Regulation 20(1) of the European Communities (European Cooperative Society) (Employee Involvement) Regulations 2007 (S.I. No. 259 of 2007)
• Equal Status Acts	• Charities Act 2009
• Protection of Employees (Fixed-Term Work) Act 2003	• Regulation 39(1) of the European Communities (Cross-Border Mergers) Regulations 2008 (S.I. No. 157 of 2008)
• National Minimum Wage Act 2000	• Inland Fisheries Act 2010
• Regulation 5, 8, 9, 10, 11 or 12 of the European Communities (Road Transport) (Organisation of Working Time of Persons Performing Mobile Road Transport Activities) Regulations 2012 (S.I. No. 36 of 2012)	• Protection of Young Persons (Employment) Act 1996
• Safety, Health and Welfare at Work Act 2005	• An employment regulation order under section 42C (inserted by section 12 of the
• Maternity Protection Act 1994	• A sectoral employment order within the meaning of Chapter 3 of Part 2 of the Industrial Relations (Amendment) Act 2015
• Parental Leave Act 1998	• Property Services (Regulation) Act 2011
• Protection of Employees (Part-Time Work) Act 2001	• Adoptive Leave Act 1995
• Protection of Employees (Temporary Agency Work) Act 2012	• Central Bank (Supervision and Enforcement) Act 2013
• European Communities (Organisation of Working Time) (Mobile Staff in Civil Aviation) Regulations 2006 (S.I. No. 507 of 2006)	• Registered employment agreement within the meaning of Chapter 2 of Part 2 of the Industrial Relations (Amendment) Act 2015
• Regulation 6 of European Communities (Protection of Employment) Regulations	• Prevention of Corruption (Amendment) Act 2001
• Protected Disclosures Act 2014	• Paternity Leave and Benefit Act 2016
• European Communities (Organisation of Working Time) (Activities of Doctors in Training) Regulations 2004 (S.I. No. 494 of 2004)	• Employees (Provision of Information and Consultation) Act 2006
• European Communities (Working Conditions of Mobile Workers engaged in Interoperable Cross-border Services in the Railway Sector) Regulations 2009 (S.I. No. 377 of 2009)	• Protection of Employment Act 1977
• Employment Permits Act 2006	• Transnational Information and Consultation of Employees Act 1996
• Consumer Protection Act 2007	• Further Education and Training Act 2013
• Pensions Acts	
• Health Act 2004	
• Criminal Justice Act 2011	

### **Explanatory Note:**

The legislative basis for the referral of complaints and disputes to the Director General of the WRC for adjudication arises from a number of different enactments which include the Workplace Relations Act 2015, the Unfair Dismissals Act 1977, the Employment Equality Act 1998, the Equal Status Act 2000, the Pensions Act 1990, the Protection of Employees (Employers' Insolvency) Act 1984, the Redundancy Payments Act 1967 and the Industrial Relations Act 1969.

The legislative basis for the referral of complaints and disputes under the majority of the enactments in respect of which the Director General of the WRC has first instance jurisdiction are governed by the provisions of **Section 41 of the Workplace Relations Act 2015 (S.I. No. 16 of 2015)**.

Section 41 of the Workplace Relations Act 2015 creates a common procedure for the presentation of complaints and the referral of disputes under various pieces of employment legislation to the Director General of the Commission. The individual employment enactments under which a person can present a complaint or refer a dispute to the Director General of the WRC in accordance with the provisions of Section 41 are listed in Schedule 5 of the Workplace Relations Act 2015.

The provisions of Section 41 of the Workplace Relations Act 2015 have been amended by the Section 24(b) of the Industrial Relations (Amendment) Act 2015 (S.I. No. 329 of 2015) and Section 20(1)(g) of the National Minimum Wage (Low Pay Commission) Act 2015 (S.I. No. 411 of 2015).

The legislative basis for the referral of complaints to the Director General of the WRC under the Unfair Dismissals Act 1977 arises from Section 8 of that Act (the relevant provisions of Section 8 of the **Unfair Dismissals Act 1977** have been amended by Section 80 of the Workplace Relations Act 2015 and Sections 14 and 20(1)(l) of the National Minimum Wage (Low Pay Commission) Act 2015 (S.I. No. 410 of 2015)).

The legislative basis for the referral of complaints to the Director General of the WRC under the **Employment Equality Act 1998** arises from Section 77 of that Act (the relevant provisions of Section 77 of the **Employment Equality Act 1998** have been amended by Section 83 of the Workplace Relations Act 2015).

The legislative basis for the referral of complaints to the Director General of the WRC under the **Equal Status Act 2000** arises from Section 21 of that Act (the relevant provisions of Section 21 of the **Equal Status Act 2000** have been amended by Section 84 of the Workplace Relations Act 2015).

The legislative basis for the referral of complaints to the Director General of the WRC under the Pensions Act 1990 arises from Part VII of that Act (the relevant provisions of Part VII of the **Pensions Act 1990** have been amended by Section 82 of the Workplace Relations Act 2015).

The legislative basis for the referral of complaints to the Director General of the WRC under the **Redundancy Payments Act 1967** arises from Section 39 of that Act (the relevant provisions of Section 39 of the **Redundancy Payments Act 1967** have been amended by Section 76 of the Workplace Relations Act 2015).

The legislative basis for the referral of complaints to the Director General of the WRC under the Protection of Employees (Employer's Insolvency) Act 1984 arises from Section 9 of that Act (the relevant provisions of Section 9 of the **Protection of Employees (Employer's Insolvency) Act 1984** have been amended by Section 81 of the Workplace Relations Act 2015).

The legislative basis for the referral of a trade dispute to the Director General of the WRC under the **Industrial Relations Act 1969** arises from Section 13 of that Act (the relevant provisions of Section 13 of the **Industrial Relations Act 1969** have been amended by Sections 8, 40(9) and Schedule 2 Part 1 Item 2 of the Workplace Relations Act 2015).

# APPENDIX TWO

## SPECIFIC COMPLAINTS RECEIVED IN 2017: LEGISLATIVE BASIS

Legislation	Number	%
Organisation of Working Time Act 1997	2525	18.0
Unfair Dismissal Acts	1768	12.6
Industrial Relations Acts	1728	12.3
Payment of Wages Act 1991	1707	12.2
Terms of Employment (Information) Act 1994	1008	7.2
Redundancy Payments Acts	587	4.2
Employment Equality Acts	719	5.1
Minimum Notice and Terms of Employment Act 1973	581	4.1
European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 ( S.I. No. 131 of 2003) (other than Regulation 4(4) (a))	366	2.6
Equal Status Acts	705	5.0
Protection of Employees (Fixed-Term Work) Act 2003	197	1.4
National Minimum Wage Act 2000	114	0.8
Regulation 5, 8, 9, 10, 11 or 12 of the European Communities (Road Transport) (Organisation of Working Time of Persons Performing Mobile Road Transport Activities) Regulations 2012 ( S.I. No. 36 of 2012)	117	0.8
Safety, Health and Welfare at Work Act 2005	255	1.8
Maternity Protection Act 1994	21	0.1
Parental Leave Act 1998	41	0.3
Protection of Employees (Part-Time Work) Act 2001	40	0.3
Protection of Employees (Temporary Agency Work) Act 2012	35	0.2
European Communities (Organisation of Working Time) (Mobile Staff in Civil Aviation) Regulations 2006 ( S.I. No. 507 of 2006)	5	0.0
Regulation 6 of European Communities (Protection of Employment) Regulations	81	0.6
Protected Disclosures Act 2014	53	0.4
Regulation 9(4) of the European Communities (Occurrence Reporting in Civil Aviation) Regulations 2007 ( S.I. No. 285 of 2007)	1	0.0
European Communities (Working Conditions of Mobile Workers engaged in Interoperable Cross-border Services in the Railway Sector) Regulations 2009 (S.I. No. 377 of 2009)	6	0.0
Employment Permits Act 2006	4	0.0
Consumer Protection Act 2007	2	0.0
Pensions Acts	37	0.3
Carer's Leave Act 2001	8	0.1
Protections for Persons Reporting Child Abuse Act 1998	5	0.0
Part 14 Section 103(55M) of the Health Act, 2007	9	0.1
Schedule 3 of the Employees (Provision of Information & Consultation) Act, 2006	9	0.1
Adoptive Leave Act, 1995	1	0.0
Prevention of Corruption (Amendment) Act 2010	9	0.1
Charities Act 2009	2	0.0
Criminal Justice Act 2011	9	0.1
Section 20 of (European co-operate Society)(Employee Involvement) Regulations 2007	1	0.0
Central Bank (Supervision and Enforcement) Act, 2013	1	0.0
Chemicals Act 2008	1	0.0
Protection of Employees (Employers' Insolvency) Act 1984	5	0.0
Inspection Based Complaints	1238	8.84
<b>Total Specific Complaints</b>	<b>14001</b>	

# APPENDIX THREE

## KEY COURT JUDGEMENTS AND ADJUDICATION DECISIONS

### Key Court Judgements

The Supreme Court has decided to refer a number of questions which have arisen in the *Minister for Justice, Equality and Law Reform v The Director of the Equality Tribunal*<sup>3</sup> (now the Workplace Relations Commission) to the Court of Justice of the European Union. A judgement is expected in late 2018.

### Adjudication Officer Decisions

In contrast to the previous system where complaints at first instance were heard in various fora, all complaints by an individual under employment, equality and industrial relations legislation are heard together by a single Adjudication Officer. The following are brief summaries of a handful of cases that contain novel points of law or address interesting issues.

#### Discriminatory treatment on a new ground under the Equal Status Acts

The Adjudication Service of the WRC hears complaints at first instance under all equality legislation including discrimination under the Equal Status Act which applies to the provision of goods and services, accommodation and education.

#### **ADJ-00004705 Tenant C v A Landlord, ADJ-00004101 Tenant B v A Landlord, ADJ-00004100 Tenant B v A Landlord**

Three tenants brought complaints against a landlord under the Equal Status Act. The Equality (Miscellaneous Provisions) Act 2015 introduced the new ‘housing assistance ground’ and prohibits discrimination in the provision of accommodation. The complainants were long-term tenants of the Respondent and contended that they were discriminated against by the landlord in its ongoing refusal to accept the Housing Assistance Payment (‘HAP’) Scheme towards the payment of rent. The Respondent argued that it was not lawfully obliged under the amended legislation to accept the HAP Scheme on behalf of existing tenants and was effectively testing the new legislation. The tenants fulfilled the financial eligibility requirements of the HAP scheme and, on a number of occasions, had forwarded an application form requesting completion of the landlord’s section as required by the local authority. It had continually refused to do so on the basis that it was not participating in the HAP Scheme. The landlord confirmed that it accepted payments under the Rent Supplement Scheme which was a similar rent subsidy but for which the complainants were ineligible.

The Adjudication Officer accepted the evidence of the complainants that the actual loss caused by the refusal of the landlord to accept the HAP payment

resulted in a loss of approximately €13,000 for each of the tenancies. The complainants gave examples of the financial hardship suffered which compromised their quality of life as they had to pay the totality of the rent from their income despite the fact they were entitled to the payments to subsidise the rent. No issue was taken with this evidence by the landlord.

The Respondent contended that the provisions of the Act could only apply to a prospective tenant arose from the wording of the Act and from the requirement that for discrimination to arise one “is in receipt of” HAP and the other is not.

The Adjudication Officer considered the Interpretation Act and the purposive approach to what are termed as ‘remedial social statutes’ adopted by the Superior Courts. She referred to *G -v- The Department for Social Protection*, where Ms Justice O’Malley referred to the Equal Status Act 2000 as being a ‘remedial social statute’ requiring liberal interpretation. as follows: “...the Act is intended to cover a broad range of human life and activity, and that its overall purpose is to reduce the social wrong of discrimination based on improper considerations. Having regard to the principles applicable to remedial statutes, it should be construed

<sup>3</sup> 2017] IESC 43

widely and liberally.”.

The Adjudication Officer found that the wording had to be interpreted as encompassing qualified applicants deemed eligible for the payment of HAP once they have sourced a dwelling and all the conditions have been met. To interpret the wording otherwise rendered the provisions nugatory not only in relation to existing tenants but also in relation to prospective tenants. An interpretation of the wording “*in receipt of*” in any other sense was absurd and/or would fail to reflect the plain intention of the Oireachtas.

The Adjudication Officer found that the landlord’s ongoing refusal to complete the HAP Application Form and/or accept HAP towards payment of the rent by way of direct payment from the Local Authority amounted to less favourable treatment. The refusal to participate in the HAP Scheme had the direct effect of

placing the tenants in a detrimental financial situation potentially placing the tenancy in jeopardy, when compared with a tenant not requiring HAP. No reasons were given as to why the Respondent was prepared to allow applications for Rent Supplement (in respect of which the complainants were not eligible) but not HAP. The Adjudication Officer found that the landlord’s attitude towards the complainants were very difficult to understand in circumstances where they were model tenants and always paid on time and honoured the terms of the tenancy.

Given the real and tangible effects of the respondent’s ongoing refusal to participate in the HAP the Adjudication Officer considered this discrimination to be at the more serious end of the scale. The Officer was constrained by the maximum award of €15,000 and ordered the landlord to pay €14,977 to one tenant and €13,365.60 the others.

## Age Discrimination under the Employment Equality Acts

### **ADJ-00007926 Devereux v Permanent Defence Force Other Ranks Representative Association (PDFORA)**

The complainant alleged that the respondent has discriminated against her on grounds of age when she was compelled to retire upon reaching the age of sixty. She was employed in a civilian capacity as an office administrator and had a contract which indicated that the normal retirement age was 60 years.

Many of the facts were agreed between the parties including the fact that there were two other civilian employees working for the respondent. The respondent argued that the mandatory retirement age for members of the Defence Forces was set out in the Defence Acts and should also apply to the civilian members.

The Adjudication Officer was satisfied that civilian employees are not governed by the Defence Acts. Only members of the Defence Forces who are acting members or those members who are seconded to

PDFORA are governed by the requirements as set out in the Act. The normal retirement age for a soldier enlisted before 1994 is 60, and is 56 for those enlisted after 1994. The objective reasoning behind the relatively early retirement ages with respect to soldiers was put forward as a consequence of the physical demands the role requires. The Adjudication Officer found that the same argument could not be made in relation to the respondent’s office-based administrative civilian staff.

The Adjudication Officer confirmed that the respondent was entitled to apply a mandatory retirement age, however it must be justified within the meaning of Section 34 (a) and Article 6 of the Directive 2000/78/EC and the means chosen by the employer must be appropriate and necessary for achieving that aim.

The respondent stated that reasoning behind the

mandatory retirement age governing the civilian employees was primarily to ensure harmony within the respondent in relation to the age of cessation of employment. However, one of the other civilian employee continued to be employed at age 64 and the only other the civilian employee, who was a retired Defence Forces member, had an extension clause inserted into his contract thus placing him in a more favourable position than the complainant.

It was further suggested by the respondent that the retirement age can be objectively justified on financial grounds. The Adjudication Officer stated it was well established in law that financial costs do not and cannot

amount to justifiable objective. The Officer was satisfied based on the evidence adduced and the documentation submitted that the complainant had established a *prima facie* case of discrimination and the respondent had failed to objectively justify its reasons for dismissing the complainant upon her reaching the age of 60.

In the circumstances, the Adjudication Officer found that re-instatement was the appropriate remedy as the complainant was in receipt of a small pension and was not eligible for the State pension for another five years. The Officer stated the Act restricted the level of compensation that can be awarded and was of the view that it would not adequately compensate her.

## Scope of Protected Disclosures Act

### **ADJ-00005011 A Bank Official v Banking Sector**

The complainant alleged that he was penalised by the respondent arising from the discovery of anomalies in the respondent's product offering. As a result, he had been marginalised and bullied. He applied for voluntary early retirement but the respondent failed to allow him to retire. The complainant submitted his claim to the WRC on 14 September 2016.

The respondents contended that the complainant was not entitled to the redress sought by him. He remained an employee of the respondent and accordingly the only claim available to him was that he was subjected to penalisation which the respondent denied.

The complainant alleged he was the subject of bullying behaviour from 2005 to 2011 which he reported in June

2012. When asked by the respondent for details none were provided by the complainant. He also alleged he applied for special status as an employee but this status was refused by the respondent although subsequently granted to him in June 2012.

The Adjudication Officer found that the scope of the claim under the Act was those events which allegedly occurred no earlier than the 15 March 2016 or if an extension of time was permitted no earlier than the 15 September 2015. He found he had no jurisdiction to issue a decision in relation to the complaint filed by the complainant under the Protected Disclosures Act 2014 as the complaint was not presented within the prescribed time limits as outlined in the Act.

## High Monetary Award under the Safety Health and Welfare at Work Act

### **ADJ-00004808 An Office Administrator v A Drug Company**

The complainant was employed by the respondent as an office administrator/manager from May 1982 until 11 July

2016. The parties made written and oral submission to the hearing and additional submissions were received

post hearing. The complainant elected to pursue a penalisation complaint under the Safety, Health and Welfare at Work Act, 2005 and withdrew her complaint under the Unfair Dismissals Act.

The complainant submitted that on the death of her late boss, his widow decided to take an active role in the day to day running of the business. She found her working relationship with the now major shareholder difficult. Due to the unhappy working environment and the effect on her health she stated she was left with no alternative but to lodge a formal grievance in the matter ranging from complaints of a bullying nature and issues regarding the safety of the work environment. As a direct result, she stated that she was summarily dismissed from her employment.

The respondent submitted that the complainant was dismissed as a consequence of a breakdown in the relationship between her and the principal employer in a small family run business. The principal employer found the complainant to be difficult to manage and increasingly uncooperative. A verbal warning was issued in May 2016 after which the complainant

absented herself from work alleging that she was suffering from work related stress. The employer went on to state that the complainant's absence from work confirmed that the respondent could manage without her, that the atmosphere had improved in her absence and so took the decision to terminate her employment.

The Adjudication Officer found that it was simply not credible that the complainant turned into the "employee from hell" as submitted by the respondent, having given 30 years of unimpeachable service to the point at which it is alleged she acted in such an offensive and reprehensible manner.

The Adjudication Officer found it significant in those circumstances that the dismissal was effected within two weeks of the formal grievance letter. In these circumstances, he found the submission of the respondent that "*the question of health and safety or the Claimant's concerns were not factors in the decision*" was not credible and found that the dismissal therefore amounted to penalisation within the meaning of the Act. He awarded the complainant €159,705 compensation for breach of s.27 of the Act.

## Unfair Dismissals Act - Gross Misconduct

### **Adj-00002603 An Associate v A Clothes Retailer**

The complainant was an associate at a respondent store and was paid €9.50 per hour. He worked part-time and worked on 18 occasions at one respondent store between 24 September 2014 and 26 January 2016. He claimed he was dismissed unfairly, which the respondent denied.

The respondent outlined that the complainant's fixed term contract was coming to an end on 26 January 2016, so there could be no financial loss after that date. In 2015, the complainant had earned €1,119 in total pay. The respondent stated that the complainant had been dismissed on 26 January 2016 on grounds of gross misconduct. The respondent had a "zero tolerance" attitude to possessing alcohol on the workplace, as

stated in its Associate Handbook. Ten other employees had been dismissed following the same event.

The complainant worked a shift of 5pm to 9pm on 22 December 2015. Another employee had supplied alcoholic beverages for pre-party drinks. After their shift ended, at least 15 people, including two members of management went to the break-out room. About an hour later, the Asset Protection Investigator entered the room briefly and asked them to leave. He had been alerted by a security guard. He stated that there were a number of people in the room and saw the bottles of beer being consumed. During the disciplinary process the Investigator said he saw the complainant drinking from a beer bottle. This was denied by the complainant

who stated he was drinking from a paper cup.

The respondent submitted that the dismissal was based on gross misconduct and the zero-tolerance policy outlined in the Employee Handbook. Ten employees had been witnessed consuming alcohol and dismissed. The complainant had further received the right to fair procedures and given the right to appeal. There had been a thorough, fair and reasonable disciplinary process. The respondent referred to *Hennessy v Read & Write Shop Ltd* (UD 192/1978) and *Kotaba v OFM Onsite Facilities Management Ltd* (UD43/2013) regarding gross misconduct and an alcohol zero-tolerance approach as reason for dismissal.

The Adjudication Officer stated, in relation to whether the complainant was drinking alcohol, it was well settled law that where there is conflict of evidence regarding a pertinent event leading to a dismissal, it is not the role of the Adjudication Officer to determine what happened, but to consider whether the employer had reasonable grounds for whatever conclusion was reached; in this case to determine whether or not the complainant was, in fact, holding a bottle. In this regard, he referred to *O'Riordan v Great Southern Hotels* (UD 1469/2003) and to *Hennessy v Read & Write Shop Ltd* (UD192/1978).

The Adjudication Officer then looked at whether the act itself constituted gross misconduct and the issue of proportionality and referred to *DHL Express (Ireland) Ltd v Coughlan* UDD 1738. It appeared that it was not entirely clear whether the informal event the complainant attended was prohibited as it could fall within “celebrations where no further business is anticipated for the day” referenced in the Handbook ; members of management were involved in organising the event; the shop had closed and staff had assembled at the back of the store; there was no evidence of drunkenness or of damage to the store; the complainant was not working at the time of the incident left when instructed and attended work as normal the following day.

Applying *DHL Express (Ireland) v Coughlan* to the complainant’s circumstances as a junior member of staff, the Adjudication Officer found that his actions did not constitute gross misconduct. It followed that the dismissal grounded on gross misconduct was unfair.

In assessing redress, the complainant was awarded €400 as, in the view of the Adjudication Officer, this was just and equitable given the number of hours worked by the complainant and the fact that his contract was coming to an end.

## Constructive Dismissal of Family Member

### **ADJ-00002171 An Office Administrator v A Joinery**

This complainant worked as an Office Administrator in the respondent’s company where her estranged husband was a Director. The complainant alleged that for a period of twenty months prior to her resignation she endured humiliation, isolation, abuse and bullying designed to force her out of her employment. Following medical advice from her GP, the complainant stated that she had to resign from her employment. She worked in the company for over twenty years and maintained that she had never been provided with a written contract of employment and no grievance procedures had been

provided to her during the course of her employment.

The complainant outlined that she was separated from her husband, a Director of the company, in 2013, and whilst there had been difficulties in the marriage from time to time, those difficulties were never brought to the workplace until 2014. She stated that it was shortly after the separation that the respondent commenced a vicious and vindictive campaign to force her out of her employment.

The respondent argued that the nature of the relationship and what happened was as a consequence of an acrimonious marital breakdown between the parties and therefore inferred that it was not something that in the normal sense related to the workplace.

The Adjudication Officer commented that, in cases where an employee resigns and then seeks to pursue the employer for constructive unfair dismissal, the burden of proof, which now passes to the employee, is set at a high level. In such cases the critical issue is the behaviour of the employer, although the employee's behaviour must also be considered. Generally, the criterion regarding the behaviour of the employer is taken to mean something that is so intolerable as to justify the complainant's resignation, and something that represents a repudiation of the contract of employment.

In this regard, the Supreme Court (Finnegan J in Berber v Dunne's Stores [2009] E.L.R. 61) was found to be instructive; '*The conduct of the employer complained of must be unreasonable and without proper cause and its effect on the employee must be judged objectively, reasonably and sensibly in order to determine if it is such that the employee cannot be expected to put up with it.*'

Having considered the evidence presented at the hearing, the Adjudication Officer was satisfied that there was a particularly difficult and acrimonious breakdown of a marital relationship between the complainant and one of the Directors of the Respondent. It was clear from the evidence that the complainant experienced regular and repeated personal verbal attacks and comments of highly inappropriate and sometimes degrading sexual nature from one of the Directors of the company. The evidence also supported

the fact that the complainant wrote to the Directors of the company detailing her concerns, advising that she felt the intention was to force her from her job. This letter remained unanswered and the behaviour towards the complainant continued.

The Adjudication Officer stated the evidence was clear that the respondent was put on notice regarding a range of inappropriate behaviours the complainant was experiencing specifically in the workplace. Whilst acknowledging it may have been difficult for the complainant's estranged husband to respond to this issue, he found that there was nonetheless an obligation and responsibility for the other Co-Director on behalf of the respondent to do so, but no action was taken to deal with the matter.

In effect the evidence indicated that the respondent stood by whilst the Complainant was exposed to a repeated and prolonged personal targeting by one of the Directors, and where a lack of reasonable response resulted in a complete breakdown of the trust between the Complainant, and the company and where the Respondent failed to address its duty of care in the workplace regarding the Co-Director's behaviour.

The Adjudication Officer was satisfied that the complainant had demonstrated she had no alternative but to leave her employment and was constructively dismissed due to the respondent's failure to address in any meaningful way the concerns she had raised and so found the complainant was unfairly dismissed.

Taking all factors into consideration including the fact that she found alternative employment within two months, albeit at a lower salary the complainant was awarded €26,500 as compensation for her unfair dismissal.

## Protected Disclosures Act - 'But For' Test

### **ADJ-00001721 A Senior Official v A Local Authority**

The complainant, a senior official, represented the respondent on the Board of Directors of a company that

operated a high-profile sporting project in the area. In 2011 the company went into liquidation and the project

ended. The complainant raised issues at the time relating to “disguised payments” and the veracity of statements made by the respondent to the media and members of the Oireachtas. In May 2014, he sent letters outlining his concerns to the recently appointed CEO of the respondent.

After the enactment of the Protected Disclosures Act in July 2014 he asked that the correspondence be treated as a protected disclosure under the Act. This was acknowledged by the respondent and the matter was investigated by a retired CEO of another local authority who found no evidence of wrongdoing by the respondent. In March 2015, the complainant wrote to a Government Minister detailing his concerns.

He was transferred in January 2016, from head of a local department to a role in the planning section. The complainant acknowledged that it was within the remit of the CEO to transfer him and that the new position was at the same grade. However, he stated it was a “reduced section; he had less responsibility and went from managing 82 people to six. He referred to the role as a “non-job”, and was essentially a demotion and therefore amounted to penalisation under the Act.

The local authority submitted that the new role was about land activation and was part of the strategic

plan. It denied the transfer had anything to do with the disclosure letter the complainant sent to the Minister. It stated that a transfer was a normal action and in the course of the reallocation of functions of a number of other employees and that there was no causal nexus between the transfer and the protected disclosures.

The Adjudication Officer noted that the respondent did not dispute that the acts of disclosure as the letters to the CEO and the Government Minister; both referred to failure to comply with a legal obligation and improper use of funds. He noted that for the complainant to succeed he must show that the commission of a protected act must be an operative cause in the sense that ‘but for’ the complainant having committed the protected act he would not have suffered the detriment and referred to the test as outlined in *McGrath Partnership v Monaghan PDD162*.

The Adjudication Officer stated that the employer was entitled to re-organise and re-assign the cohort of senior managers; the role the complainant was transferred to was of significant public policy importance and was of interest to the elected members; the current CEO who was new to the organisation was not involved in the events complained of. In his decision, the Adjudication Officer concluded that the 2016 transfer was too remote to meet the ‘but for’ test.

## Industrial Relations Act - Compliant of failure to deal with inappropriate behaviour

### **ADJ-00002893 An Assistant Director of Nursing v A Health Service Provider**

On December 19, 2014, the complainant reported to the respondent that she had been the victim of a physical assault by a named colleague who is a consultant. She also brought to their attention a pattern of inappropriate behaviour on the part of this colleague leading up to the physical assault. The INMO said that neither of these matters have been investigated, and the complainant remained on a ‘protective placement’ to date. She had availed of a period of sick leave as she felt unable to return to her workplace because of

fears for her safety. Following the intervention of the union, the complainant was facilitated with a return to a different workplace in August 2015. The dispute concerned the continuing failure of the respondent regarding its failure to investigate the complaints. The union stated that the facts associated with the dispute were as simple as they were appalling.

The union set out in detail the efforts it made to pursue the case and the failure of the respondent to

implement its Grievance Procedure and its Dignity at Work Policy. It had failed in its duty of care to the complainant and has engaged in acts that amount to an egregious breach of trust in that it prevaricated, made commitments and breached those commitments repeatedly. It showed undue deference to the other party and stood back while the complainant remained on a 'protective placement' that was unsuitable for her. The respondent, through its contradictory and confusing actions and inaction, had caused distress and anxiety for the complainant.

The recommendation sought was that the respondent immediately commence, and conclude within a reasonable timeframe, investigations into both matters; that the respondent pay compensation to the Complainant for the distress and anxiety associated delay and the unsuitable work placement. It sought a recommendation that the Complainant be compensated in the amount of €30,000.

The Respondent set out in detail the efforts it made to deal with the case. The main issue was that it was faced with trying to negotiate between two professional representative bodies to agree on what policy should the case be dealt with; whether both sets of complaints be dealt with under the one or two separate investigations; agreement on the terms of reference and agreement on suitably qualified investigators.

It recognised that there has been an inordinate delay in dealing with the complainant's complaint and strongly argued that by being obliged to consult with employee representative bodies it had been drawn into a situation that caused the delay which was largely outside its control. At the hearing, it said that the investigation

was due to start on April 1, 2017, would be proceed as expeditiously as possible.

The Adjudication Officer did not entirely accept the union's submissions in relation to the complainant's placement in alternative work pending the outcome of the investigation. What occurred was a 'protective placement' for the benefit of the complainant. This was done at the behest of the complainant and in consultation with her and the union.

Notwithstanding this, the Adjudication Officer accepted that the complainant would not reasonably have expected to have spent such a very lengthy period in what was to be a short-term arrangement and she had good reason to feel aggrieved.

Regarding the delay in commencing any investigation, he accepted that some of the delay was caused by the complainant adding a second set of complaints. He also accepted that the respondent had an obligation to deal and consult with the other party. Such delay should not be more than a few weeks or a couple of months and could not excuse a more than two-year delay.

The Adjudication Officer recommended that the investigation commence on the date already set and if not then within two weeks of the recommendation and that the investigation should be completed within a short defined period. He further recommended a compensation payment of €12,500 because of the way her complaint regarding alleged inappropriate behaviour was handled, but that it was particular to the unique facts and circumstances of the case and could not be used or quoted by either party or any other party in any other case.

## Time Limits - Reasonable Cause to Extend

### **ADJ-00005512 An IT Specialist v A University**

The complainant who had depression alleged discrimination by the University in November 2015,

when he was unsuccessful for a post. He lodged a complaint to the WRC in October 2016 and

subsequently submitted documentation requesting an extension of time for reasonable cause. At the hearing the complainant stated he had submitted a grievance to University in December 2015 concerning his unsuccessful application and had alleged discrimination at this point, but had not specified it was disability related. He consulted a solicitor in February or March 2016 and said that they considered making a complaint to the WRC and had discussed time limits. He had been unwell for a number of months with ongoing mental health issues and he was unable to address matters. The respondent said that the complainant had engaged with it from December 2015, he had obtained independent legal advice, He did not raise the issue of his disability until July 2016 (which was already out of

time) when he stated he would lodge a complaint under the Employment Equality Acts but did not submit the claim until October 2016.

The Adjudication Officer stated that the Act allows a six-month extension on top of the normal six months allowed within which to submit a claim if "reasonable cause" is demonstrated for the delay and cited *Cementation Skanska v Carroll DWT0338*. He noted that the complainant had access to legal advice at an early stage; had engaged with the respondent during the period and no medical evidence was adduced to support the request for an extension of time. He decided that no reasonable cause was established to extend the time limit.

## Industrial Relations Act - Shift Pattern

### **An Employee v A Manufacturing Company ADJ-00007223**

SIPTU, on behalf of the complainant, stated that he was the only person working a unique roster in that he worked one overnight each week. It was contended that the very nature of the hours of work was a shift pattern, and that it should command the premium rate of 33% on all hours he worked.

The union stated that he constantly felt "jet lagged" due to the changing pattern/cycle of the shift, this was having a major effect on his well-being and health. If he continued to work such a pattern there was a very real danger of stress and there could be issues with the Safety, Health & Welfare at Work Act 2005.

The union sought that the entire shift pattern/cycle command a rate of 33%; and that the other workers on the day shift be allowed to apply for this shift pattern/cycle.

The respondent stated that the facts were not in dispute but that the issue of a shift premium had not been raised in line with the normal industrial relations process, which required the complainant to exhaust internal processes before an external referral.

Consequently, the matter was not properly before the WRC. However, the respondent agreed to address the issues.

It confirmed that the complainant worked one night a week and got a night shift premium (33%) for hours only worked at night at the same value as other night workers. Section 8 of the Company/Union Agreement provides that shift premiums were only applicable in instances of "Permanent Evening Shift" and "Permanent Night Shift". There was no daytime premium, but in the spirit of the agreement he received a premium for the night he worked.

The Adjudication Officer was satisfied that the complainant's concerns were genuine, and that he diligently worked this pattern for almost three years. Evidence suggested that he sought the cooperation of his colleagues, with a view to them agreeing to participate in a broader roster system but these efforts appear to have proved unsuccessful.

It was not feasible or appropriate to accede to the request that the shift premium of 33% should apply

to the daytime element of the complainant's working week. However, having discussed the matter with both sides, the Adjudication Officer was of the view that the solution lay in the creation of a roster system which spread the requirement for the Sunday/Monday shift attendance over a greater number of the

chemical technicians; the most workable solution was the creation of a 4-person roster, involving the four chemical technicians (including the complainant) on the current day shift and accordingly, he recommended same.

## Successful Protected Disclosures Case

### *An Employee v A Nursing Home ADJ - 00000456*

The complainant commenced work with the respondent nursing home on March 14, 2015. She gave evidence that on June 2, 2015, she came across a resident "tied with a walking belt into an ordinary chair in her room, with the door closed, in a very distressed state." She reported the incident to the Assistant Director of Nursing and completed incident report. Three days later, she discovered that her report had been removed from the Communication Book and immediately wrote to the Director of Nursing. The complainant was told that the respondent was aware of the person responsible and it would be dealt with. The report was never reinstated, which caused her serious concerns regarding ongoing practices. Following this, she perceived a marked change in attitude of management towards her including insinuating to other staff that she made mistakes. During this period, she raised concerns about flaws in drug procedures, staff training and qualifications as well as the lack of supervision and appraisal of the staff.

In October, the complainant contacted HIQA and made a protected disclosure and some days later it made an unannounced inspection of the nursing home. Soon after she approached HIQA, believing she had no other option, the complainant referred a complaint alleging bullying and harassment to the WRC under section 13 of the Industrial Relations Act. In November, she went out on sick leave on the advice of her doctor, returning on November 24. The next day was she was asked to withdraw the referral.

On 14 January 2016, she was "called for a word" by the General Manager. The complainant declined to attend as she had no advance notice of the meeting, no offer of representation and no time to prepare. While on annual leave in January she was called to a disciplinary hearing. At this point, the complainant was made aware of complaints made against her. She was requested to attend again for a meeting on February 4, but was unable to do as she was certified as unfit for work due to stress. That day, she was notified that her employment had been terminated.

The respondent stated that the complainant was dismissed with immediate effect for gross misconduct. The reasons for the dismissal included failure to sign for dangerous drugs administered to residents. The dismissal was solely based on the serious and dangerous breaches of procedure made by the complainant going back to June 2015. It denied that the dismissal was in anyway linked to her complaint to HIQA.

The Adjudication Officer found it was clear the complainant raised concerns both internally and to HIQA in relation to patient care in line with the protected disclosure legislation. In considering whether the complainant was penalised for making the disclosure, she noted the first time the respondent raised serious concerns about the complainant's performance was November 25, after her disclosures had been made. The Adjudication Officer was critical of the respondent's failure to produce any documentary

proof of follow up between November 25, when the concerns were first raised by the respondent, and 14 January 2016. She was further critical of the fact that the complainant was invited to two disciplinary meeting, one when she was on annual leave the other when she was on sick leave and stated that there was a clear lack of adherence to the basic principles and

rules of natural justice. The Adjudication Officer found that that the respondent commenced and instigated the disciplinary procedure in an attempt to dismiss the complainant in advance of her reaching her 12 months of service with the company as a result of her protected disclosure to HIQA amounting to penalisation. The complainant was awarded €52,416 in compensation.

## Disability Discrimination and a Collective Agreement

### **A Worker v A Manufacturing Company ADJ-00000557**

The complainant was ill with depression which was impervious to medication and was absent from work for about 10 months between 2014 and 2015. Her evidence was that the shift pattern which included day and night shifts caused her significant sleep deprivation and exacerbated her depression. She returned to work due to significant financial concerns and asked she be accommodated by giving her day shift work as recommended by her doctor. The company's occupational health physician saw the complainant in early 2015 and found the complainant would not be fit to work for 12 months but could then return to day shift work, if she could be accommodated

The company advised the complainant that there were no day shift vacancies. There was considerable competition for these places and it referred a long standing collective agreement with a trade union that controlled shift transfers. The company referred to a Labour Court recommendation as to why the agreement had precedence over the complainant's rights.

The Adjudication Officer relied the High Court judgment in *Mullally & Ors v The Labour Court [2016] IEHC 291*, which found not only was a Labour Court recommendation not legally binding, but also that

such a recommendation did not create any form of *res judicata* or any other form of binding resolution. He also noted the statutory right of a disabled worker to reasonable accommodation was very much not a grace-and-favour affair which depends on whether a suitable alternative position happens to come up just at the right moment when it was needed, and for which the disabled worker must compete with others.

The Adjudication Officer stated that the right to reasonable accommodation was not dependent on any such operational contingencies, but was limited only by the financial resources of a respondent and whether the measures identified as necessary placed a disproportionate financial burden on a respondent employer. He found that the employer treated the matter of the complainant's disability as a normal transfer request in line with its union agreement rather than as a statutory obligation. Considering the likely costs involved in replacing the complainant on the swing shift, he did not accept that the burden on the employer would have been disproportionate and it could not rely on section 16(3)(b) & (c) of the Acts in its defence. He found the company discriminated against her on the disability ground and ordered it to pay her €20,000 for the effects of such discrimination.

## Date of Dismissal in a Transfer of Undertaking

### **ADJ-00002798 A Sales Director v A Food Company**

The complainant alleged a breach under the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003. He was recruited in February 2015 and had a contractual entitlement to three months' notice of termination. The company went into receivership in June 2015. On 6 August, the receiver advised the complainant that his position was redundant and he specifically told that no sale had been concluded. He was given a week's notice. The next day the receiver issued a press release to the effect that the company would be sold to the respondent. The complainant argued that the purported redundancy was in breach of the TUPE Regulations and any dismissal by reason of the transfer was unlawful.

In the meantime, the complainant successfully obtained a High Court order preventing his dismissal from the company and it confirmed that a contractual entitlement, such as three months' notice of termination, could not be circumvented by the receivership process. On 29 October, his employment was terminated by reason of redundancy and the receiver confirmed he did not have to work his notice and was paid the three months. The company was

eventually sold on 12 December, 2015.

The Adjudication Officer found that the work of the receivers fell well within the economic, technical and organisational defence allowed by the Regulations. He then went on to consider the operative date as to when the employment contract ended: the complainant argued it was when the three months' notice ended while the respondents said it was on the date his notice was given. If it was the latter, he would still have been an employee by the date of the transfer.

The Adjudication Officer referred to Dr. Mary Redmond in 'Dismissal Law in Ireland', "If a contract lays down a notice period, it will technically be a breach of contract to give pay in lieu of notice unless this right is reserved to the employer. If it is, and an employee accepts payment of wages in lieu of notice, the date of dismissal will be the date on which termination takes effect, as the contract will have been determined in accordance with its terms." As the complainant accepted the payment in lieu, his contract of employment ended on October 29 and therefore was not an employee on the date of the transfer.

## Was a Radio Show Presenter a Worker?

### **A Radio Presenter v A Radio Station ADJ-00004395**

The complainant lodged a case under the Industrial Relations Act alleging she was not an independent contractor but was an employee. She worked under several contracts that explicitly stated she was an independent contractor, between 2005 and 2017. The complainant had also worked on TV (for channels of the respondent and for other TV stations), had a newspaper column, and, in 2016, worked on promotions for a German/Irish supermarket chain.

The respondent argued that it was the norm in the industry to use independent contracts, with the constant need for stations to rapidly adapt and change formats and maintained it had the right to change presenters and formats as it felt the need to. It stated that the position of the complainant was analogous to an actor, and relied on the Canadian case of *Walden v Danger Bay Productions* (1994) in this regard.

The Adjudication Officer looked at Irish caselaw,

most recently the EAT case of *O'Hanlon v Ulster Bank* (UD1096/2014), *Barry & Ors v Minister for Agriculture, Henry Denny and Sons Ireland Limited V The Minister for Social Welfare, Tierney -v- An Post* (2000); *Castleisland Cattle Breeding Society Ltd -v- The Minister for Social and Family Affairs* (2004) and the *Electricity Supply Board -v- The Minister for Social Community and Family Affairs & Others* (2006). He found that her performance had a definite bearing on her future earnings i.e. her JNMR ratings, the number of listeners, her public profile generated all influenced her potential future fee earning position. She used the freedom of her status to secure other broadcasting work and sorted out her own tax affairs.

The Adjudication Officer looked at the nature of broadcasting work and commented that the complainant was "a unique radio product" and that public tastes in entertainment change rapidly, an entertainment show presenter could be both the winner today and the loser tomorrow. She could face losing her current radio show in 2017 but may well reemerge in a different format as public tastes change. In his recommendation, he found she was an independent contractor, and noted a permanent contract of service would be completely inappropriate for either party to the claim.

## Re-engagement as Redress

### **A Kitchen Porter v A Hotel ADJ-00002243**

The complainant commenced work as a kitchen porter with the respondent hotel, in January 2006. In early September 2015, he approached the deputy manager to discuss the winter closure and told him he wished to finish in September and return in the Spring. He was informed by the manager that this did not suit the hotel. As a result the complainant filled out two cessation forms for himself and his daughter, who also worked at the hotel. The respondent issued P45s along with cessation pay. The complainant returned from a trip to Poland on September 29 and requested the cancellation of his P45. This request was refused and he was offered the option of an immediate return to work. The respondent then received a letter from the complainant's solicitor alleging he was constructively dismissed.

The complainant disputed the evidence from the respondent. He submitted that the hotel let him go in order to bring in students who would work for less money. When he filled out the forms he thought he

was applying for his annual leave and was shocked to discover that he had been 'fired.' He sought compensation in preference to the restoration of his old job on the basis he had developed a distrust of the respondent.

The Adjudication Officer commented on the obvious dispute between the parties on their respective recollection of events and while the complainant understood that he was taking time off, the respondent took it that he was leaving. The practice of application for annual leave at the hotel led to a certain amount of confusion. She was not satisfied that the complainant understood the content of the cessation form and noted the lack of reference to ceremonies" normally associated with a person's resignation, particularly that of a long serving staff member. She said she was satisfied there were no substantial grounds justifying the dismissal and that there was a serious shortfall between what would be expected of a reasonable employer and what actually happened.

Noting that the complainant was unable to find alternative employment despite a comprehensive search for work in the geographical area of the hotel, the Adjudication Officer opted for re-engagement over an award of compensation, backdated to between September 6, 2016 and the close of the 2016 season, and to take effect from the opening of the 2017 season. She was satisfied that she had canvassed the views of the Parties in accordance with *The State*

*(Pharmaceutical Union) v The EAT.*

She made a number of recommendations aimed at an overhaul of practices at the respondent, including: all work documents to be translated into a language understood by an employee; all meetings and discussions with staff to be documented, placed on a personnel file and be retrievable; and the respondent to undertake workshops on grievance procedures.

## Criteria for Promotion - Industrial Relations Act

### ***Public Service Employee v State Agency ADJ-00007052***

IMPACT brought a complaint on behalf of a member related to the altering of the eligibility criteria for a post in the State Agency which resulted in the complainant being excluded from a competition for a job which he contended he would have been eligible for prior to the respondent unilaterally changing the criteria. His complaint has been through the internal processes without satisfactory resolution. He requested a review of his application under the Codes of Practise Appeals Process, questioning whether the eligibility criteria were too narrow. Such reviews were limited to whether the process had been adhered to properly. This was the first time the respondent had recruited for this post. The grievance was first referred to the Arbitrator to assess whether the initial review has been carried out in line with proper procedures. The Arbitrator found that the conduct of the initial review has been adhered to and

that the decision deeming the complainant's application as ineligible was upheld.

The respondent acknowledged that it was normal practise within the Agency for such changes to be discussed the Staff Partners prior to advertisement and that this had not happened in this case. However, it contended the setting of eligibility criteria was the remit of the employer.

The Adjudication Officer considered the submission of both parties. In the evidence presented to him he accepted the respondent's right to determine the criteria it required for any post in the functioning of its role and duty under the mandate. He therefore did not find the claim well founded.

# APPENDIX FOUR

## INSPECTION ACTIVITIES AND OUTCOMES TO 31 DECEMBER 2017

Sector	Cases	No in Breach	Breach %	Employees	Unpaid Wages (€)
Agriculture	48	36	75%	804	56,229
Construction	75	39	52%	2,228	44,497
Contract Cleaning	18	14	78%	4,276	29,395
Domestic Worker	20	10	50%	40	30,190
Electrical	6	2	33%	103	2,933
Equine	54	30	56%	128	7,759
Fisheries	95	13	14%	150	6,252
Food & Drink	645	371	58%	8,077	444,634
Hair and Beauty	79	48	61%	481	19,955
Health Nursing and Childcare	78	30	38%	7,496	200,198
Hotel	55	28	51%	3,679	109,227
Manufacturing	38	18	47%	6,927	33,576
Other	332	132	40%	35,063	224,462
Professional Services	124	33	27%	17,145	46,959
Security	20	7	35%	1,627	13,167
Transport	61	29	48%	1,576	168,125
Wholesale and Retail	258	157	61%	9,459	331,927
<b>GRAND TOTAL</b>	<b>4,747</b>	<b>2,032</b>	<b>43%</b>	<b>99,259</b>	<b>1,769,484</b>
<b>Unannounced Visits</b>	<b>2,741</b>	<b>1,035</b>	<b>38%</b>	<b>-</b>	<b>-</b>
<b>Announced Visits</b>	<b>2,006</b>	<b>997</b>	<b>50%</b>	<b>-</b>	<b>-</b>

# APPENDIX FIVE

## INSPECTION AND ENFORCEMENT

### PROSECUTIONS RESULTING IN CONVICTIONS

#### JANUARY - DECEMBER 2017

Employer	Sector	Legislation of which Conviction Relates
Aranbrook Ltd t/a Beach Hotel Downings, Letterkenny, Co. Donegal	Hotel	Organisation of Working Time Act, 1997  National Minimum Wage Act, 2000
Mr. Muhammad Sami t/a Apache Pizza Main Street Carrigaline Cork	Food & Drink	Employment Permits Acts 2003 and 2006
Bruno Carlesimo t/a Macaris Unit 4 Riverforest Shopping Centre Riverforest, Leixlip, Co. Kildare	Food & Drink	Employment Permits Acts 2003 and 2006  Workplace Relations Act, 2015
Hokkaido Japanese Restaurant Ltd t/a Hokkaido Sushi & Noodle Bar 15 Main Street, Celbridge, Co Kildare	Food & Drink	Employment Permits Acts 2003 and 2006
Yun Xiu Gao t/a Hokkaido Sushi & Noodle Bar 15 Main Street, Celbridge, Co Kildare	Food & Drink	Employment Permits Acts 2003 and 2006
Qui Zhen Chen t/a Hokkaido Sushi & Noodle Bar 15 Main Street, Celbridge, Co Kildare	Food & Drink	Employment Permits Acts 2003 and 2006
Mr. Seamus Cummins t/a Kearneys Castle Hotel Main Street, Cashel, Co Tipperary	Food & Drink	National Minimum Wage Act, 2000  Organisation of Working Time Act, 1997  Payment of Wages Act, 1991

Employer	Sector	Legislation of which Conviction Relates
Mohammed Tariq Mehmood t/a AKM Accessories 53 Thornsby Avenue Athlone Co. Westmeath	Wholesale & Retail	Employment Permits Acts 2003 and 2006  Organisation of Working Time Act, 1997  National Minimum Wage Act, 2000
Zuby Foods Ltd t/a Zaiqa Foods Tramore Road, Cork	Wholesale & Retail	Organisation of Working Time Act, 1997
Chan Weng Ltd t/a Riceland Chinese Takeaway 17 Main St, Raheny, Dublin 5	Food & Drink	Employment Permits Acts 2003 and 2006
Claudiu Muntean t/a Auto Shine Car Wash Dublin Road, Edenderry, Co Offaly	Car Wash	National Minimum Wage Act, 2000
Gariba Restaurants Limited t/a Casa de Burritos Unit C Woodquay, Ennis, Clare	Food & Drink	Employment Permits Acts 2003 and 2006  Payment of Wages Act, 1991  Workplace Relations Act, 2015
Chicken Corner Ltd t/a Chicken Corner Takeaway Patrick St, Ballyraggett, Co Kilkenny	Food & Drink	Employment Permits Acts 2003 and 2006  Organisation of Working Time Act, 1997
Shouxia Chi t/a Mag Asian Cuisine 61 Dublin Street, Monaghan	Food & Drink	Employment Permits Acts 2003 and 2006
Ai Qin Wang t/a Dream Chinese Restaurant Mill Road, Killorglin Co. Kerry	Food & Drink	Employment Permits Acts 2003 and 2006
Geraldine Healy t/a Geraldine's Hair Salon 3 Oakdale, Park Road, Killarney, Co Kerry	Hair & Beauty	Organisation of Working Time Act, 1997

Employer	Sector	Legislation of which Conviction Relates
Na Goods Services Limited t/a Planet Kebabish Abbey Street Cahir Co. Tipperary	Food & Drink	Employment Permits Acts 2003 and 2006
Chyj Ltd t/a Kung Fu Chinese Thai Japanese Restaurant Unit 2 Phibsboro Shopping Centre, Phibsborough, Dublin 7	Food & Drink	Employment Permits Acts 2003 and 2006  Organisation of Working Time Act, 1997
Mr. Chi Hui Yang t/a Kung Fu Chinese Thai Japanese Restaurant Unit 2 Phibsboro Shopping Centre, Phibsborough, Dublin 7	Food & Drink	Employment Permits Acts 2003 and 2006
Yue Jiao Liu t/a Denis Kebab House Castle Hill, Enniscorthy, Co. Wexford	Food & Drink	Payment of Wages Act, 1991
Ge Jun Chen t/a Alisan Oriental Restaurant 3 Mount Street, Claremorris, Co Mayo	Food & Drink	Employment Permits Acts 2003 and 2006
Tianfu Limited t/a Alisan Oriental Restaurant 3 Mount Street, Claremorris, Co Mayo	Food & Drink	Employment Permits Acts 2003 and 2006
Xu Lin t/a Alisan Oriental Restaurant 3 Mount Street, Claremorris, Co Mayo	Food & Drink	Employment Permits Acts 2003 and 2006
Chuan Fu Lin Ltd t/a Peking Inn 11 O'Neill St, Carrickmacross, Co Monaghan	Food & Drink	Employment Permits Acts 2003 and 2006

Employer	Sector	Legislation of which Conviction Relates
Cococai Ltd t/a Peking Inn Monaghan Rd. Castleblayney Co. Monaghan	Food & Drink	Employment Permits Acts 2003 and 2006
Minzhen Chai t/a Peking Monaghan Road, Castleblayney, Co Monaghan	Food & Drink	Employment Permits Acts 2003 and 2006
Qiang Fu t/a Peking Inn 11 O'Neill St, Carrickmacross, Co Monaghan	Food & Drink	Employment Permits Acts 2003 and 2006
Majeed Zadran t/a Solo Pizza Unit 8, Charlotte Quay, Broad St. Limerick	Food & Drink	Workplace Relations Act, 2015
Chow Yoke Chang t/a China Link Chinese Takeaway 6 Main Street, Swords, Co Dublin	Food & Drink	Employment Permits Acts 2003 and 2006  Organisation of Working Time Act, 1997
Clover Chi Limited t/a Clover Thai & Japanese Restaurant Unit 6-7 Bedford Row Limerick	Food & Drink	Payment of Wages Act, 1991
Kashmir Kaur t/a Ashoka Market Centre, Lower Main Street, Letterkenny Co. Donegal	Food & Drink	Organisation of Working Time Act, 1997
Brenda Gibbons t/a Millie's Tea Rooms Forquar, Milford, Co Donegal	Food & Drink	National Minimum Wage Act, 2000  Organisation of Working Time Act, 1997
N & Q Ventures Limited t/a Ali Baba Main St. Patrickswell Limerick	Food & Drink	Organisation of Working Time Act, 1997  National Minimum Wage Act, 2000  Employment Permits Acts 2003 and 2006  Workplace Relations Act, 2015

Employer	Sector	Legislation of which Conviction Relates
Slavcho Dimitrov, Neli Zhilova, Yuliyan Cholakov, Aneliya Milenova t/a Mim Take-Away Mill St. Tullow Co. Carlow	Food & Drink	National Minimum Wage Act, 2000  Organisation of Working Time Act, 1997  Payment of Wages Act, 1991
Bamboo Garden Limited t/a Bamboo Garden Chinese Restaurant & Take Away Unit 9 Grove Island Shopping Centre Corbally Limerick	Food & Drink	Employment Permits Acts 2003 and 2006
Crokers Bar & Restaurant Limited Main St. Murroe Co. Limerick	Food & Drink	Workplace Relations Act, 2015
Ms Susan Lau t/a Golden Dragon The Diamond, Monaghan Town, Co Monaghan	Food & Drink	Employment Permits Acts 2003 and 2006
Jiyong Zhou t/a The Moon c/o Darcy McGees 64 Main Stret Arklow Co. Wicklow	Food & Drink	Employment Permits Acts 2003 and 2006
Zhenzhu Ni t/a The Moon c/o Darcy McGees 64 Main Street Arklow Co. Wicklow	Food & Drink	Employment Permits Acts 2003 and 2006
Goodyield Limited t/a Ashford Oriental Main St. Ashford Co. Wicklow	Food & Drink	Workplace Relations Act, 2015
Mr Hicham Elahmed t/a New Look Barbers 4 Hanover Street Waterford	Hair & Beauty	Employment Permits Acts 2003 and 2006

Employer	Sector	Legislation of which Conviction Relates
Yun Gui Chi t/a Swans 101-102 High St. Kilkenny	Food & Drink	Organisation of Working Time Act, 1997 Workplace Relations Act, 2015 Employment Permits Acts 2003 and 2006
Frank Murphy t/a Franks Café Church St. Moate Co. Westmeath	Food & Drink	National Minimum Wage Act, 2000  Organisation of Working Time Act, 1997
Michael Cahir t/a Liscannor Service Station Liscannor Co. Clare	Wholesale & Retail	Workplace Relations Act, 2015
Mr Injamamul Haque t/a Ali Baba Turkish Kebab House 23/23a Washington St. Cork	Food & Drink	Employment Permits Acts 2003 and 2006
Sunshine Juice Limited Park House Carlow	Manufacturing	National Minimum Wage Act, 2000
Wheelock Fruits Ltd Finchogue Enniscorthy Co. Wexford	Agriculture	National Minimum Wage Act, 2000 Workplace Relations Act, 2015 Organisation of Working Time Act, 1997
Jade Palace Restaurant Limited 1 Applewood Village Green Swords Co. Dublin	Food & Drink	Organisation of Working Time Act, 1997  Employment Permits Acts 2003 and 2006
Mr. Philip Somers Townamullogue Courtnacuddy Enniscorthy Co. Wexford	Agriculture	Protection of Young Persons (Employment) Act, 1996
Philip Somers Townamullogue Courtnacuddy Enniscorthy Co. Wexford	Agriculture	National Minimum Wage Act, 2000  Organisation of Working Time Act, 1997
Wheelock Fruits Ltd Finchogue Enniscorthy Co. Wexford	Agriculture	Protection of Young Persons (Employment) Act, 1996

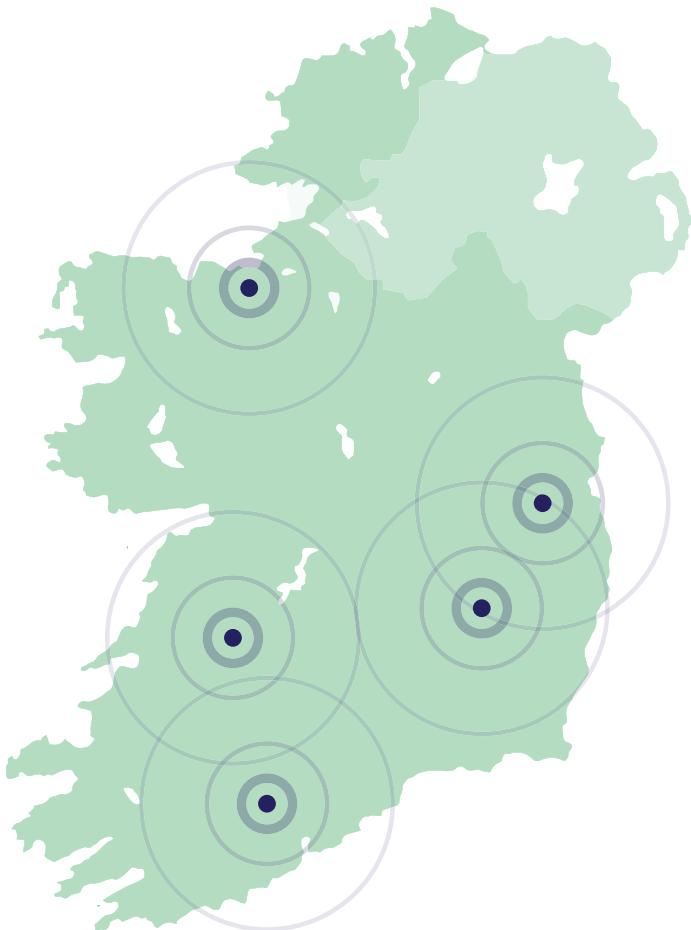
Employer	Sector	Legislation of which Conviction Relates
Great India Restaurant Limited French Church St. Portarlington Co. Laois	Food & Drink	Employment Permits Acts 2003 and 2006
Bo Lang t/a Musashi Noodle & Sushi Bar 15 Capel St. Dublin 1	Food & Drink	Employment Permits Acts 2003 and 2006
Bo & Wei Ltd t/a Musashi Noodle & Sushi Bar 15 Capel St. Dublin 1	Food & Drink	Employment Permits Acts 2003 and 2006
Mr Hani Eldeghidy t/a Town Barbers 56 Parnell Street Clonmel Co. Tipperary	Hair & Beauty	Organisation of Working Time Act, 1997  Workplace Relations Act, 2015
New Age Foods Ltd t/a China Tower Main St. Ballybofey Co. Donegal	Food & Drink	National Minimum Wage Act, 2000  Organisation of Working Time Act, 1997
Mo & E Sons Foods Limited t/a Montos Main St. Kilmessan Meath	Food & Drink	Employment Permits Acts 2003 and 2006
Mr Ying Lin t/a Happy House No. 1 Terminus Villas Turkey Rd. Tramore Co. Waterford	Food & Drink	Employment Permits Acts 2003 and 2006
Palmira Ltd. Unit 1, Great Island Enterprise Park Great Island Business Park Ballincollig Co. Cork	Construction	Organisation of Working Time Act, 1997
Ramk Restaurants & Retail Ltd t/a Indian Moon 15 George's Quay Cork	Food & Drink	Employment Permits Acts 2003 and 2006  Organisation of Working Time Act, 1997

Employer	Sector	Legislation of which Conviction Relates
J & S Ruckin Limited t/a Golden Noodle Box 50 Austin Friars St. Mullingar Co. Westmeath	Food & Drink	Employment Permits Acts 2003 and 2006
Chungwai Wong t/a Golden Noodle Box 50 Austin Friars St. Mullingar Co. Westmeath	Food & Drink	Workplace Relations Act, 2015
Jinhong Liao t/a Golden Noodle Box 50 Austin Friars St. Mullingar Co. Westmeath	Food & Drink	Organisation of Working Time Act, 1997
Andrei Ungureanu t/a Tonys Hand Car Wash The Square Portarlington Co. Laois	Car Wash	Workplace Relations Act, 2015
Ioneluz Unteanu t/a Tony's Hand Car Wash The Square Portarlington Co. Laois	Car Wash	Workplace Relations Act, 2015
Wei Lei t/a The Good Year Main St. Portarlington Co. Laois	Food & Drink	Employment Permits Acts 2003 and 2006
Shun Wen Ltd t/a The Good Year Main St. Portarlington Co. Laois	Food & Drink	Employment Permits Acts 2003 and 2006
Jing Zhu t/a The Good Year Main Street, Portarlington, Co Laois	Food & Drink	Employment Permits Acts 2003 and 2006
Richard Whelan t/a Kouture Boutique/Freesoul Units 10 & 13 Laois Shopping Centre Portlaoise Co. Laois	Wholesale & Retail	Organisation of Working Time Act, 1997

Employer	Sector	Legislation of which Conviction Relates
Xiao Jie Shi t/a Oriental City Kenn Market Mountmellick Rd. Portlaoise Co. Laois	Food & Drink	Employment Permits Acts 2003 and 2006
Mohamed Moin Uddin t/a New Shimla Catering 6 Dean St. Kilkenny	Food & Drink	Employment Permits Acts 2003 and 2006
Mr. Sala Uddin t/a New Shimla Catering 6 Dean St. Kilkenny	Food & Drink	Employment Permits Acts 2003 and 2006
Clg Food Ltd t/a New China Garden Newbury Hotel Dominick St. Mullingar Co. Westmeath	Food & Drink	Organisation of Working Time Act, 1997  Employment Permits Acts 2003 and 2006
Longguan Chen t/a New China Garden Newbury Hotel Dominick St. Mullingar Co. Westmeath	Food & Drink	Workplace Relations Act, 2015
Baronbrook Limited t/a Mervyns Kilcullen Rd. Naas Co. Kildare	Wholesale & Retail	Organisation of Working Time Act, 1997
Rising Lifei Limtied t/a Fate Restaurant 1 Railway Terrace Naas Co. Kildare	Food & Drink	Organisation of Working Time Act, 1997  Employment Permits Acts 2003 and 2006
Emarkation Lrd t/a Mana Digital Suite 21 Dockgate Merchants Rd. Galway	Professional Services	Workplace Relations Act, 2015
Shuyi Sun t/a Apache Peking Main St. Moate Co. Westmeath	Food & Drink	Employment Permits Acts 2003 and 2006  Payment of Wages Act, 1991  Organisation of Working Time Act, 1997  Workplace Relations Act, 2015

Employer	Sector	Legislation of which Conviction Relates
Yan Xue t/a Rice Asian 11 Bridge St. Ardee Co. Louth	Food & Drink	Employment Permits Acts 2003 and 2006
Guang Hui Liu t/a Wok Inn Main St. Ferns Wexford	Food & Drink	Organisation of Working Time Act, 1997  Employment Permits Acts 2003 and 2006
Margaret Lavelle t/a Central Service Station Cashel Achill Co. Mayo	Wholesale & Retail	Payment of Wages Act, 1991
Na Goods Services Limited t/a Pizzeria Restaurant & Takeaway 39 Main St. Cashel Co. Tipperary	Food & Drink	Employment Permits Acts 2003 and 2006
Mohammad Rasool Yousafkhel t/a Go Go Pizza Whitemill Rd. Whitemill Wexford	Food & Drink	Employment Permits Acts 2003 and 2006  Organisation of Working Time Act, 1997  Workplace Relations Act, 2015  National Minimum Wage Act, 2000
Rainbow Chinese Takeaway Limited t/a Sohos Asian Street Food 25 Main St. Tipperary Co. Tipperary	Food & Drink	Employment Permits Acts 2003 and 2006
Double Dragon Limited t/a Dragon Inn 5 Davis St. Tipperary Town	Food & Drink	Employment Permits Acts 2003 and 2006  Workplace Relations Act, 2015
Crystal Palace Restaurant Limited t/a Crystal Palace Restaurant Kickham St. Tipperary Town	Food & Drink	Employment Permits Acts 2003 and 2006
Ko's Chinese Restaurant (Cavan) Limited t/a Ko's 61 Main St. Cavan	Food & Drink	Employment Permits Acts 2003 and 2006

Employer	Sector	Legislation of which Conviction Relates
Chaud Eastern Heritage Foods Limited t/a Jewel In The Crown Shelbourne Rd. Dublin 4	Food & Drink	National Minimum Wage Act, 2000  Organisation of Working Time Act, 1997  Employment Permits Acts 2003 and 2006
Fergal O'Connor t/a O'Connor's Ice Cream Shop Marine Parade Lahinch Co. Clare	Food & Drink	Workplace Relations Act, 2015
Yu Mei Yang t/a Jade Dragon The Mall Westport Co. Mayo	Food & Drink	Employment Permits Acts 2003 and 2006
Wheely Environmental Refuse Services Ltd t/a WERS Weir Road Business Park Tuam Co. Galway	Refuse Company	Employment Permits Acts 2003 and 2006
Gazmend Bajgora t/a Roma Take Away The Square Kilrush Co. Clare	Food & Drink	Employment Permits Acts 2003 and 2006
Superior Bistro & Pizza Limited t/a Peking Apache Pizza Frederick House Frederick St. Ashbourne Co. Meath	Food & Drink	Employment Permits Acts 2003 and 2006



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An Coimisiún um Chaidreamh san Áit Oibre  
Workplace Relations Commission